Public-Private Partnership as a Legal Concept and its Features in the Civil Law of the Russian Federation and Central Asian Countries and Issues Related to Due Qualification of the Public-Private Partnership Contract

Summary

This article studies the international experience, as well as the experience of Russia and the Central Asian countries in understanding the mechanism of public-private partnership ('PPP')[1] in the doctrine of law, as well as in its implementation at the legislative level, including in view of the ongoing work on the SPP legislation harmonisation in different regions. The author states that with the lack of correct understanding of SPP as a legal category by the domestic science of civil law, properly enshrined in national legislation, the problem of SPP 'imitations' is inevitable. At the same time, a correct understanding of SPP as a phenomenon is only possible in view of the international practice and is achievable using the comparative law method. The article, therefore, raises the issue of a correct understanding of the SPP phenomenon and its qualifying features, which make it possible to distinguish it from related legal institutions, as well as the problem of the correct qualification of investment agreements with the participation of public legal entities as SPP agreements. The author founds that in Russia and the Central Asian countries, the approach to understanding SPP differs from the internationally recognised one, since the emphasis is on the content rather than the form, i.e., on the essence of SPP, as a special type of joint investment activity of the state and private business, which must meet certain criteria, and not as a kind of government contract. The article also concludes that, from the point of view of the global science of private law, SPP should be qualified as a complex legal institution of *sui generis* legislation, while a PPP agreement in Russia and all Central Asian countries should be qualified as a defined mixed contract that has a strictly private law nature. It is noted that the choice of the private law model for the development of the SPP agreement institution in Russia and the countries of Central Asia is obviously justified by the fact that the priority goals in these specific societies at this historical moment are to increase private interest and initiative, i.e., the preference is reasonably given to 'social value' of private law over the 'social value' of public law. Therefore, in any legal order, state-private partnerships must be distinguished from the overall mix of related legal institutions as a complex legal institution using the seven SPP features established at the legislative level, which are described below in detail. At the same time, to qualify any investment agreement with the participation of a public legal entity as an SPP agreement, such an agreement shall be concluded in the procedure and on the terms established by the relevant national SPP law or the law on concessions.

Key words: state, public-private partnership, investment activity, public law formations, concession.

[1] The term 'public-private partnership' (PPP) is used as a synonym to the term 'state-public partnership' (SPP) for the purpose of this article. The term 'SPP agreement', respectively, for the purposes of this article means any agreement officially recognised as a public-private partnership agreement in the relevant jurisdiction.

1. Topic Relevance

Since the Soviet Union collapse in 1991, the Central Asian countries and Russia have been in constant search and adjustment of optimal legal mechanisms for attracting private capital to create and upgrade public infrastructure. Apart from the fact that all these countries have laws on concessions[2], as well as other contractual forms of investment agreements with the participation of public legal entities, there are specialised laws on state-private partnerships ('SPP') adopted in Tajikistan in 2012, in Kazakhstan and Russia in 2015, in Uzbekistan in 2019, and in Kyrgyzstan and Turkmenistan as recently as 2021[3]. The formation and development of the SPP institution in the doctrine and dogma of civil law in the Central Asian countries and Russia is of particular interest for research, since over the past thirty years these states have already accumulated original experience in implementing the SPP phenomenon in national legislation, and Russia and Kazakhstan already have the law enforcement practice in the SPP area.

The solution of the problem of determining the legal nature and qualifying features of SPP that allow it to be distinguished from related legal institutions are of particular interest. Without a correct understanding of SPP and the SPP agreement as related legal categories by the domestic science of civil law, properly enshrined in national legislation and public policy instruments in the SPP area, both the abuse of the SPP mechanism by corrupt civil servants and dishonest business representatives, as well as the general inefficiency of using the SPP mechanism, even in the absence of any malicious intent on the part of the persons participating in SPP projects are inevitable. A good example of such an unsuccessful SPP development is still Kazakhstan So, due to the uncontrolled growth of 'imitated' SPP projects in Kazakhstan, the head of state - Kassym-Jomart Tokayev, admitted in 2019 that in Kazakhstan "the very idea of SPP is discredited"[4]. In Russia, the SPP institution is also developing not without problems, as can be seen from the resonant so-called 'Bashkir Case', 'Tuvin Case' and 'KhMAO Case', where at the initiative of the antimonopoly authority the generally accepted understanding of the concession was subjected to the risk of revision[5].. Thereat, the question remains open since in Russia there is still no confidence

[2] See: 1) The Law 'On Concessions', dated 7 July 2006, No. 167-III. 2) The Law of the Kyrgyz Republic 'On concessions and concession enterprises in the Kyrgyz Republic' dated 6 March 1992, No. 850-XII. 3) The Federal Law of the Russian Federation 'On concession agreements' dated 21 July 2005, No. 115-FZ. 4) The Law of the Republic of Tajikistan 'On Concessions' dated 26 December 2011, No. 783. 5) The Law of Turkmenistan 'On Foreign Concessions' dated 1 October 1993, No. 859-XII.

[3] The following laws were adopted (in order of priority): 1) the Law of the Republic of Tajikistan, dated 28 December 2012, No. 907 'On State-Private Partnership', 2) the Law of the Republic of Kazakhstan, dated 31 October 2015, No. 379-V ZRK 'On State-Private Partnership' , 3) the Federal Law, dated 13 July 2015, No. 224-FZ 'On State-Private Partnership, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation', 4) the Law of the Republic of Uzbekistan, dated 10 May 2019 , No. ZRU-537 'On State-Private Partnership', 5) the Law of the Kyrgyz Republic, dated 11 August 2021, No. 98 'On State-Private Partnership', 6) the Law of Turkmenistan, dated 5 June 2021, No. 379-VI 'On State-Private Partnerships'.

[4] The Speech by the Head of State K. Tokayev at the extended meeting of the Government on 15 July 2019. Official website of the President of the Republic of Kazakhstan. Available at: https://www.akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-glavy-gosudarstva-k-tokaeva-na-rasshirennom-zasedanii-pravitelstva

[5] The Resolution of the Ninth Arbitration Court of Appeal dated 4 September 2017, No. 09AP-33753/2017, 09AP-34801/2017 in case No A40-23141/17 ('Bashkir case').
The Resolution of the West-Siberian district Arbitration Court, dated 14 February 2020, No. F04-162/2020 in case No. A45-2242/2019. ('Tuvin Case')

that the courts are not allowed to use the mechanism for re-qualifying concession agreements into state contracts for the purpose of terminating concession agreements or declaring them invalid.

2. PPP Concept and its Features in the Global Best Practices

There is, obviously, no one in the world still has an unambiguous answer to the question of what SPP is, neither lawyers nor economists[6]. Moreover, there is still not even a single and universally recognised definition for the SPP phenomenon, not to mention a universally accepted legal term of PPP. For example, alternative names for the SPP include, among others, 'P3' in North American countries, 'private financial initiative' (PFI) in the UK, Japan and Malaysia, 'private participation in infrastructure' (PPI) in South Korea and so on[7]. Therefore, it is not surprising that SPP is understood differently in different countries, but, nevertheless, there is an obvious trend towards harmonisation of SPP laws of the world countries both at the regional and global levels, including the unification of the SPP as a legal concept. First of all, it is worthy to note the so-called 'UNCITRAL Model Legislative Provisions on Public-Private Partnerships', as well as the 'UNCITRAL Legislative Guide on Public-Private Partnerships' adopted in 2019 by the United Nations Commission on International Trade Law (UNCITRAL), which are designed to help in creating a legal framework that is conducive to public-private partnerships (PPPs).

2.1. SPP Concept in the Global Best Practices

The UNCITRAL Model Provisions define PPP, which is treated as an "agreement", i.e., in essence, a civil law contract between a so-called 'corporate customer' and a private entity[8]. This UNCITRAL definition may, most likely, be considered as an internationally recognised legal definition of SPP over time, given the international authority of UNCITRAL and its work on the unification of SPP legislation in the world.

Thereat, the concepts of «PPP» and «PPP contract», according to UNISTRAL, are essentially synonymous, since both of these terms mean exactly an agreement between a corporate customer and a private entity[9]. Considering that an agreement and contract are institutions of private law, UNCITRAL thus obviously emphasises the private law nature of SPP. In particular, according to

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The Judgment of the Arbitration Court of the Khanty-Mansiysk Autonomous District - Yugra, dated 2 July 2021, in case No. A75-984/2021 ('KhMAO Case').

[6]Many researches note the multidisciplinary nature of SPP as the main problem in a common understanding of SPP by economists, lawyers, political scientists, financiers, etc. For example:
D. De Clerck & E. Demeulemeester & W. Herroelen, 2012. "Public Private Partnerships: Look before you Leap into Marriage," Review of Business and Economic Literature, Intersentia, vol. 57(3), P 248. https://ideas.repec.org/a/sen/rebelj/v57i3y2012p249-262.html
Osborne, Stephen. (2000). Public Private Partnerships: Theory and Practice in International Perspective. London: Routledge. P. 10.
Mouraviev, N., & Kakabadse, N. (2016). Conceptualising public-private partnerships: A critical appraisal of approaches to meanings and forms. Society and Business Review, 11(2), PP 155-173.
Kochetkova S.A. State Private Partnerships: Textbook. – M.: Publishing House of the Natural Science Academy, 2016. – 174 p.
Gromova Y.A. State-Private Partnership and Its Legal Forms: Textbook. M.: Yustitsinform, 2019.

[7] E.R. Yescombe, Edward Farquharson. Public-Private Partnerships for Infrastructure (Second Edition), Butterworth-Heinemann, 2018, ISBN 9780081007662, https://doi.org/10.1016/B978-0-08-100766-2.00002-4. P 10.

[8] UNCITRAL Model Legislative Provisions on Public-Private Partnerships. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ru/19-11013_mlpppp_r.pdf. P 1.

[9] Ibid. P 2.

UNCITRAL, an SPP agreement appears to be a mixed contract, since the UNCITRAL Guide clarifies that the term PPP should be understood as "a wide range of contractual relationships" and that "PPPs are not a particular new category of governmental contracts. In fact, PPPs may use various well-known contractual arrangements (lease agreements, concessions, service agreements, turnkey contracts, DBFO contracts)"[10]. Given that UNISTRAL proceeds from the private law principles of SPP, it understands the SPP precisely as a special type of investment agreement between a state customer and a private partner. The UNCITRAL Model Provisions leave it up to the state that enacts national PPP law based on the provisions to provide an exhaustive or indicative list of economic sectors in which PPP contracts may be entered into[11].

The UNCITRAL legal definition of PPP also consolidates the opinion already formed in international practice that there are only two types of PPP depending on whether the demand risk is transferred to the private partner or not:

1) "concession", as a type of PPP in the form of investment agreements, under which the investments of the private partner (concessionaire) are returned through the direct collection of fees from consumers (i.e. "concession PPP" or, traditionally "user pays PPP"); and
2) "PPP" in the narrow sense, as the second type of PPP in the form of investment agreements, under which the investment are not returned at the expense of consumers, so that the private partner usually does not collect fees from consumers in its favour, but receives regular remuneration from the state for facility operating availability in the form of an availability payment (i.e. "non-concession PPP" or, traditionally, "availability PPP")[12].

Please note that SPP is understood as a civil law contract between a public entity and a private entity not only by UNCITRAL, but also by the Organization for Economic Cooperation and Development (OECD) and international financial institutions and development banks, including the World Bank, the European Bank for Reconstruction and Development and the Asian Development Bank[13]. For instance, according to the 2017 World Bank SPP Reference Guide developed with the participation of, *inter alia*, the organisations listed above, the SPP means a "long-term contract"[14]. At the same time, the World Bank SPP Reference Guide, in order to better understand the SPP concept, provides for a non-exhaustive list of types of contracts with the state participation that cannot be qualified as SPPs and gives a brief explanation of why. For example, it indicates that a management contract, an operation and maintenance contract, and affermage agreements cannot be considered as SPPs, since these types of contracts, whilst can be long-term, do not require significant investments from a private entity in order to be recognised as an SPP.

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[10] UNCITRAL Legislative Guide on Public-Private Partnerships. Available at: https://uncitral.un.org/ru/lgppp. P 6.
[11] Ibid. P 3.
[12] Ibid. P 17.
[13] The Russian legal literature emphasises that the harmonisation of SPP and concession legislation, as its variety, as well as the unification of the legal definition of SPP at the international level, became possible "after unity was achieved in understanding and evaluating the legal nature of the concession agreement as a civil law agreement. This is reflected in international documents." See: ed.-in-chief - N.N. Marysheva. International private law: textbook / [Vlasov N.V. et al.] ; - 3rd ed., revisев and supplemented - M. : Contract Law Firm; Wolters Kluwer, - 928 s/. 2010. P 533.
[14] "World Bank. 2017. Public Private Partnerships: Reference Guide Version 3. World Bank, Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/29052 License: CC BY 3.0 IGO." P 1.

2.2. State Partner Concept in the Global Practice

The very term state-private partnership suggests that such a partnership is impossible without the participation of the state, i.e., the state, as a participant in relations arising within the framework of SPP, is obviously one of the qualifying features of SPP. Therefore, correct understanding of SPP requires study of international practice, including addressing the issue as to who can act in the legal relations arising within the framework of SPP from the side of the state, i.e., who can be the so-called 'state partner'[15]?

According to global practice, public partners can be "either public legal entities, or organisations specially endowed with such powers by public legal entities, as well as organisations being under a decisive impact of public legal entities"[16]. At the same time, in most legal systems, public legal entities have a special legal personality, i.e., the right to enter into civil law relations and conclude only certain types of contracts, only in cases expressly provided for by national legislation and only in the procedure strictly defined by local legislation, for instance, state procurement contracts[17].

UNCITRAL, for instance, sees a 'corporate customer' as a state partner, while this term means 'public organisation', namely "public authority of the host country"[18]. The theory of law understands the "public organization" as an organisation being created and operating primarily under the rules of public law. Accordingly, UNCITRAL's 'corporate customer' should be understood, apparently, as a special type of legal subjects, in paticular, the so-called "legal entity of public law" as a subject of public law that has the opportunity to participate in certain private law relations[19]. It is important to note that the 'legal entity of public law' category is currently known to the legislation of many developed countries with a market type of economy; however, it

[15] The terms 'state partner' and 'public partner' are used everywhere in scientific circulation and for the purposes of this article are synonyms.

[16] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Sheveleva) (Infotropic Media, 2015). P 287.

[17] In the international legal literature, for instance, they distinguish, *inter alia*, the following types of investment agreements or as they are also called "long-term economic development agreements", used in global practice to attract investment and concluded between states and foreign investors: 1) "traditional" concessions as agreements granting the right to use subsoil, 2) production sharing agreements, 3) Build, Operate and Transfer Agreements as agreements used for the implementation of large infrastructure projects , 4) "implementation agreements" used to create new power plants within the so-called "independent power projects" (IPP), etc. See for example:
Christoph H. Schreuer, Foreign investment disputes: cases materials and commentary by R. Doak Bishop, James Crawford and W. Michael Reisman Kluwer Law International, 2005, ICSID Review - Foreign Investment Law Journal, Volume 20, Issue 2, Fall 2005, https://doi.org/10.1093/icsidreview/20.2.644. P 213-224.
Henrik M. Inadomi. Independent Power Projects in Developing Countries: Legal Investment Protection and Consequence for Development. Dordrecht: Kluwer Law International 2010, ISBN: 978-90-411-3178-2. P 47.
Hoffman, S. (2007). The Law and Business of International Project Finance: A Resource for Governments, Sponsors, Lawyers, and Project Participants (3rd ed.). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511818387. P 147.

[18] UNCITRAL Legislative Guide on Public-Private Partnerships. P 8.

[19] Western legal literature often states of three types of legal subjects: an individual (a person and a citizen), a legal entity of private law and a legal entity of public law. For example: Chirkin V.E. Legal Entity of Public Law: Monograph. Moscow: Norma, 2022. P 42.

is absent both in the dogma of law and in the doctrine of law in Russia and Central Asian countries[20].

The science of law, as a rule, says about the following features, among other things, as the main distinguishing features of a legal entity of public law: 1) a legal entity of public law is not a private legal entity, but a public legal entity, 2) unlike legal entities of private law, the appointment of a legal entity of public law in society is an activity in the name of the "common good" rather than profit making within the business activity, 3) legal entities of public law are always associated with public authorities[21].

Thereat, the legal literature, obviously, still has no common understanding of which organisations can and should be classified as legal entities of public law, since this concept is understood differently in different countries. For example, the Russian legal scholar - Mr Chirkin, distinguishes only five types of legal entities of public law, including public legal entities, however, he does not classify commercial organisations with state participation as legal entities of public law[22]. At the same time, Kazakhstani law researchers believe that "under certain conditions in certain jurisdictions commercial organisations with state participation in their capital, or those established by the state through assigning state or state-managed public property in another way, and, as a rule, vesting them with certain administrative and legal powers, may be classified as LEPL by law"[23].

2.3. PPP Facility Concept in the Global Best Practices

The term "public infrastructure" as used in the UNCITRAL Guidelines and the term "infrastructure facility" as defined in the UNCITRAL Model Provisions also help to better understand the SPP phenomenon, since these terms allow to guess what should be understood as an SPP facility according to the best world practice and, therefore, to identify another characteristic feature of SPP.

According to UNCITRAL, 'infrastructure facility' means not only 'material objects', but also 'systems' that directly or indirectly participate in the provision of services to the population[24]. The term 'public infrastructure', as defined in the UNCITRAL Guidelines, means 'tangible facilities that are used directly or indirectly to provide the services most important to the population or to host their providers'[25]. The SPP facility, respectively, is understood as 'public infrastructure',

[20] See for example: M.K. Suleimenov, Academician, Holder of Habilitation Degree in Law, Professor; F.S. Karagussov, Holder of Habilitation Degree in Law, Professor; A.A. Kot, Holder of Habilitation Degree in Law; A.E. Duyssenova, Candidate of Juridical Sciences; S.V. Skryabin, Candidate of Juridical Sciences, Associate Professor. Article dated 5 February 2018. On the concept and legal status of legal entities of public law in the legislation of some developed foreign states and former Soviet republics. Available at: https://online.zakon.kz/Document/?doc_id=32603692&pos=176;-39#pos=176;-39

[21] Chirkin V.E. Legal Entity of Public Law: Monograph. Moscow: Norma, 2022. P 76-94.

[22] Ibid. P 102.

[23] M.K. Suleimenov, Academician, Holder of Habilitation Degree in Law, Professor; F.S. Karagussov, Holder of Habilitation Degree in Law, Professor; A.A. Kot, Holder of Habilitation Degree in Law; A.E. Duyssenova, Candidate of Juridical Sciences; S.V. Skryabin, Candidate of Juridical Sciences, Associate Professor. Article dated 5 February 2018. On the concept and legal status of legal entities of public law in the legislation of some developed foreign states and former Soviet republics.

[24] UNCITRAL Model Legislative Provisions on Public-Private Partnerships. P 2.

[25] UNCITRAL Legislative Guide on Public-Private Partnerships. P 5.

which should be in the form of some objects or a set of objects, but necessarily in tangible form, which means only movable and immovable things, but not property rights, not exclusive property rights and not other intangible benefits. At the same time, such tangible objects must be crucial for the normal functioning of the respective society or economy.

The object of an PPP agreement is one of the qualifying features of a PPP, since it usually indicates the presence of a public interest in the agreement. The reservation in the UNCITRAL Guidelines that not any objects can be considered as public infrastructure, but only those that can be used "to provide the most important services for the population or to accommodate their providers", allows us to understand what should be the areas of activity where the PPP agreement can be used. Therefore, no wonder that the majority of international SPP specialists and economists, who distinguish the so-called 'economic' infrastructure as subspecies of public infrastructure, i.e., the infrastructure necessary for everyday economic activity, such as roads and utility networks (water, waste water, electricity); and 'social' infrastructure, i.e., infrastructure necessary to maintain the social fabric, such as schools, hospitals, libraries, and prisons agree with the UNCITRAL's understanding of public infrastructure as an SPP facility[26]. A casino, for example, does not fall under the definition of public infrastructure in any way and, obviously, should not be considered as a possible SPP facility by any SPP legislation in the world.

2.4. Legal Nature of PPP and PPP Agreement in Global Best Practices

In the legislations and legal science of the countries of the so-called developed legal order, they often distinguish a type of contracts with special regulation - the so-called 'state contracts' or 'government contracts' as a special type different from the 'ordinary' private law contracts between individuals and legal entities (private contracts)[27]. The category of 'state contracts' implies the achievement of goals of public interest, while the private party always has the sole purpose of making a profit, and includes, among other things, PPP agreements and contracts in the area of public (municipal) procurement as subtypes[28]. For example, the English legal literature understand an SPP as a special kind of "long-term state contracts"[29]. In this case, for a better understanding of the goals of public interest, it is worth noting that within a state-private partnership, the public sector should not pursue purely commercial goals, therefore, purely commercial transactions are excluded as PPPs[30].

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[26] E.R. Yescombe, Edward Farquharson. Public-Private Partnerships for Infrastructure (Second Edition), Butterworth-Heinemann, 2018, ISBN 9780081007662, https://doi.org/10.1016/B978-0-08-100766-2.00002-4. P 7.

[27] In legal doctrine, 'state contracts' means "a commercial agreement between a private economic entity, on the one hand, and a state company or authority, on the other." At the same time, in case of the failure to perform or improper performance of obligations under a state contract, the state party may be released from liability if its actions that led to such consequences were caused by the need to ensure public interests. See: Labin D.K. International Law for the Protection and Encouragement of Foreign Investments: Monograph / D.K.Labin. – M.: YUSTITCIYA, 2019 P 165 and 169.

[28] See for example: Davies, A. (2008-09-11). The Public Law of Government Contracts. : Oxford University Press. Retrieved 27 Oct. 2021, from https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199287390.001.0001/acprof-9780199287390. P 2.

[29] Marique, Yseult. (2014). Public-private partnerships and the law: Regulation, institutions and community. 10.4337/9781781004555. P 100.

[30] See for example: Osborne, Stephen. (2000). Public Private Partnerships: Theory and Practice in International Perspective. London: Routledge. P 11.

At the same time, if we talk about the legal nature of state contracts in general and PPP agreements in particular, then in the international legal literature there are two main models of SPP: the British model defined as private law, and the French model characterised as public law[31].

For example, French law, in addition to the system of ordinary private law contracts, provides for a separate system of so-called 'administrative contracts' (contrats administratifs), which fall under the jurisdiction of administrative courts and have their own special regulation by public law. In particular, concession agreements and the so-called 'partnership agreement', which are the main two contractual forms of PPP in France, are administrative contracts under French law[32]. This distinction is important because, from the French law perspective, the contractual relationship in an administrative contract is different from the contractual relationship in a private law contract, since the parties to an administrative contract are de facto unequal[33]. Under an administrative contract, for instance, the state party may unilaterally modify or even terminate the contract if it comes from the public interest[34].

Many authors treated the category of administrative contracts as an exclusive feature of the law of France and some countries of the Roman legal system, but a similar legal category called 'public law contract' exists in German law as well. Public law contracts, including PPP agreements, are considered in German legal science "as a form of subordination comparable to an administrative act, but not as a genuine form of cooperation between legal equal subjects"[35]. Apparently, PPP agreements in the doctrine of German law qualify as public law contracts, because the subject of PPP agreements contains both private law and public law elements, and the state being a party to the contract still has state authority, i.e., in any case, it has more power despite the formal 'legal equality' of the parties to the contract. In particular, according to German law researchers, "qualification of a contract as a public law contract depends not on the subjective perception of its parties, but to a greater extent on the fact whether the subject of the contract is of a public law nature. If the contract contains both public law and private law elements, then it all depends on which party has more power"[36].

The legal literature explains this difference in approaches by different understanding in the countries of continental law and in the countries of Anglo-Saxon law of the concept such as 'the

[31] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Sheveleva) (Infotropic Media, 2015). P 3.

[32] Ordinance No. 2004-559, dated 17 July 2004 (Article 1) adopted by the French government establishes that "partnership agreements are administrative contracts". See: Contracts in the Civil Law of Foreign Countries: Monograph / N. I. Gaidayenko Sher, D. O. Grachev, F. A. Leshchenkov et al. ; ed.-in-chief S. V. Solovyova. – M. : IZiSP: Standard: INFRA-M, 2018. P 53.

[33]The Public-Private Partnership Law Review, Chapter: France, by François-Guilhem Vaissier, Louis-Jérôme Laisney, Olivier Le Bars and Sacha Ruffié, White and Case, Law Business Research, The Law Reviews, April 2021. https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/france#footnote-053-backlink

[34] Davies, A. (2008-09-11). The Public Law of Government Contracts.: Oxford University Press. Retrieved 27 Oct. 2021, from https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199287390.001.0001/acprof-9780199287390. P 56.

[35] Public-private partnership in the municipal area: German and Russian experience: collective monograph / ed. E. Gritsenko [et al.].- M.: Infotropic. Media, 2014. P 186.

[36] Jörg Pudelka. Article: Public law contracts as grounds for the emergence, change, and termination of legal relations and their application in tax law. Scientific Bulletin of Kherson State University. Release 3. Volume 1 2017. P 194. Available at: https://lj.journal.kspu.edu/index.php/lj/article/view/289/273

state' and, accordingly, the ability of the state, in principle, to enter into any private law relations and conclude any contracts with private individuals. In particular, both the dogma of law and the doctrine of law in France and Germany have historically adhered to the views of the so-called doctrine of sovereignty and the doctrine of the separation of powers in order to justify the fundamental prohibition for the state as a political organization designed to unite society, to enter into any agreements[37]. The founder of administrative law in Germany - Otto Mayer, said in the 19th century: "The state does not conclude contracts!"[38]. However, as noted by many researchers of law, the states of continental Europe over time acquired more and more functions and responsibilities, while their own resources to fulfil the promises made to society became less and less, which forced them to transfer a part of the initially public functions of the state to private individuals through the institution of the contract. This process was apparently accelerated by the liberal theories gaining popularity, including the revival of interest in the ideas of natural law, as well as the emergence of administrative courts that are independent of political regimes[39]. For all that, the concept of a 'contracting state' was properly introduced into law in France only at the beginning of the 20th century, and in Germany only after the Second World War. Moreover, it was introduced in the form of public law rather than civil law contracts, since, obviously, from the perspective of the legal science of France and Germany, the introduction of the concept of a contract into public law is the only way to enable the state to conclude contracts given its special status of sovereign power.

Please note that the legal nature of SPP agreements, concession agreements in particular, may be of fundamental importance for resolving investment disputes involving states and international investors in international commercial arbitrations. For example, in a dispute between the Government of Kuwait and American Independent Oil Co (Aminoil) within a concession agreement, the Government of Kuwait insisted that the concession agreement should be considered as a type of administrative contract, which means that the State of Kuwait retained the certain rights of the sovereign, including the right to unilaterally change the terms of the contract[40]. The arbitral tribunal, however, considered this argument unfounded, since international law or general principles of law do not provide for such a category as an administrative contract[41].

In any case, the categories of a public law contract and an administrative contract are still not clearly spelled out in the positive law of the countries of Central Asia and Russia, and are unknown or at least remain poorly understood in the doctrine as scientific categories[42]. Moreover, these

[37] See for example: Abegg, Andreas. "The Evolution of the Contracting State and Its Courts." The American Journal of Comparative Law 59, no. 3 (2011): 611–36. P 626. The article is available at: http://www.jstor.org/stable/23045679
[38] Public-private partnership in the municipal area: German and Russian experience: collective monograph / ed. E. Gritsenko [et al.].- M.: Infotropic. Media, 2014. P 186.
[39] See for example: Abegg, Andreas. "The Evolution of the Contracting State and Its Courts." The American Journal of Comparative Law 59, no. 3 (2011): 611–36. P 635. The article is available at: http://www.jstor.org/stable/23045679
[40] See, for example, the final award, dated 24 March 1982 on the case of the Government of the State of Kuwait v American Independent Oil Co (Aminol). Available at: https://jusmundi.com/en/document/decision/en-the-american-independent-oil-company-v-the-government-of-the-state-of-kuwait-final-award-wednesday-24th-march-1982
[41] Cameron, P 2021, International Energy Investment Law: The Pursuit of Stability . 2 edn, Oxford University Press. P 165.
[42] See for example:

legal categories, both in Russia and in the Central Asian countries, are regarded as "some kind of chimeras that do not fit into the dualistic system of law, its division into public and private law" [43].

The recognition of the SPP Agreement as an administrative contract or a public law agreement is practically important due to the the possibility of applying national civil law, in particular the possibility of the parties to negotiate under the contract under all conditions of cooperation, unless otherwise prohibited by law, i.r. to apply the principle of private law "everything which is not forbidden is allowed", while administrative and public law agreements fall under the principle of public law - "only what is expressed directly provided by law is allowed". The legal nature of the contract also affects the ways of protecting their rights, since such a way of protecting subjective civil rights as, for instance, the recovery of losses in a judicial proceeding is only possible for civil law contracts. If a PPP agreement is recognised as an administrative agreement under the relevant national legislation, then an administrative procedure for protecting rights shall apply, including not in the courts of general jurisdiction, but in special administrative courts, for instance, in France, as mentioned above.

It is interesting to note that even in the countries of the developed legal order, where state contracts as a whole and the PPP agreements, in particular, do not belong to public law contracts, in any case, the legal literature notes their mixed legal nature and, as a result, inherent internal inconsistency and uncertainty in regulation[44]. The also note the double role of the PPP agreement: on the one hand, this is a regular agreement that fixes commercial conditions, and on the other hand, this is an act of state power, so the PPP agreement has to some extent a public law nature[45]. Generally, this is due to the fact that in the so-called state contracts the state always seeks to preserve the sovereign prerogative, including the opportunity to unilaterally change or not comply with the terms of the contract concluded, if it meets public interests, while it is important for the private party, that the state is concluding an agreement with him on the principle "no more equal than others."[46] For example, the doctrine of the law of the United States recognises that "the

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Klimkin Nikolai Stepanovich Administrative contract in the system of contractual relations of the Russian Federation // Izvestiya VUZov. Volga region. Social Sciences. 2014. No. 2 (30). URL: https://cyberleninka.ru/article/n/investitsionnaya-deyatelnost-ponyatie-pravovye-formy-osuschestvleniya-i-publichnaya-organizatsiya (date: 06.11.2021).

Derkach N.G. Article: The Nature and Features of the Administrative Contract ('Administrative Law and Process', 2020, N 9).

Public-private partnership in the municipal area: German and Russian experience: collective monograph / ed. E. Gritsenko [et al.].- M.: Infotropic. Media, 2014. P 201.

[43] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Sheveleva) (Infotropic Media, 2015). P 15.

[44] See for example: Voss, J. O. (10 Dec. 2010). The Impact of Investment Treaties on Contracts between Host States and Foreign Investors. Leiden, The Netherlands: Brill | Nijhoff. doi: https://doi.org/10.1163/ej.9789004192232.i-363. Page 17.

[45] See for example: Hoffman, S. (2007). The Law and Business of International Project Finance: A Resource for Governments, Sponsors, Lawyers, and Project Participants (3rd ed.). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511818387. P 145.

[46] "State contracts" in Western legal literature is understood, obviously, as the same public contracts and these terms are synonymous words, with the only feature that the private party in state contracts is a foreign investor. The term 'state contract', apparently, was first introduced by the United Nations Conference in Trade and Development (UNCTAD). UNCTAD, International Investment Agreements Issues Paper Series, State Contracts (2004), https://unctad.org/system/files/official-document/iteiit200411_en.pdf. P.3.

Federal Government is exempted from civil liability in cases of violation of contractual obligations, if it acts in public interest or issues as a sovereign subject the rules of general application that may impede the proper execution of existing commercial contracts concluded by them with private counterparties" [47]. In this regard, the Australian lawyer E.M. Campbell opines that "everyone who decided to enter into an agreement with the government or state authority always comes to a certain risk, since the execution of the agreement by the parties can become partially or completely impossible due to changes in the legislation or the actions of the state party to exercise legal power."[48]

The British SPP model is defined as a private law one, while in the English law, the PPP agreement is classified as a special subtype of contracts, the so-called "relational Contracts" different from "classic" contracts concluded as part of classical contractual law[49]. The category of "relational contract" in the English law, unlike the "classic" contract, suggests that the parties to the contact are focused on long-term partnerships and, if possible, should refrain from using their contract rights, including the right to demand strict compliance with the terms of the contract, if this contradicts the goal of long-term cooperation[50]. The practical significance of qualifying PPP agreements as relative contracts is the way of interpreting such agreements by English courts. For instance, in the case of Amey against the City Council of Birmingham, the English court ruled that a 25-year-old contract concluded within a private financial initiative (PFI) for the maintenance of the Birmingham road network was a relational contract. Having recognised the PFI contract as a relative contract, the court then decided that the Amey's argument that the company was obliged to support only those parts of the road network, which were included in the data set provided by the City Council of Birmingham at the conclusion of the PFI contract, is unfounded. In its decision, the court emphasised that "any relational contract of this nature will most likely be very voluminous and contain many shortcomings and oddities. Both parties should have a reasonable approach according to what is, obviously, the long-term purpose of the contract. They should not cling to shortcomings and oddities in order to disrupt the project and maximise their own benefits."[51] Thus, the court, obviously, concluded that, given the long-term nature of the PFI contract, it was inevitable that Amey's contractual obligations strictly defined at the time of the contract signing would change over time. Given that, the court of appeal decided, apparently, that Amey should not "cling" for contractual conditions, and, given the more important goal in the SPP project (in particular, to maintain long partnerships), should be obliged to make concessions to its partner and from time to time update the data set of the road network. The English legal literature justifies the qualifications of the PPP agreements as "relational contracts" by the fact that the concept of SPP cannot be limited to the concept of an "agreement", i.e., certain contract rights and

[47] Labin D.K. International Law for the Protection and Encouragement of Foreign Investments: Monograph / D.K.Labin. – M.: YUSTITCIYA, 2019 P 168.
[48] Ibid. P 168.
[49] See for example: Marique, Yseult. (2014). Public-private partnerships and the law: Regulation, institutions and community. 10.4337/9781781004555. P 102.
[50] Richard Brown and Ben Chivers (2019). Relational contracts: what are they and why do they matter? Available at: https://www.lexology.com/library/detail.aspx?g=90176e74-235d-403a-877e-bee5a4ecd38b
[51] The Lord Judge Jackson, Court of Appeal in Amey Birmingham Highways Ltd V Birmingham City Council [2018] Ewca Civ 264 (22 February 2018). Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2018/264.html

obligations, but should be understood as "long-term relationships" or even as a "way of life"[52]. According to the modern English legal science, therefore, SPP is something more than just an agreement or a contract, which is only its frame. At the same time, according to the theory of English law, relations arising within the PPP agreements will not be successful if each party will strictly require the execution of contract rights and obligations, since such a long relationship requires flexibility from both parties.

The concept of 'relational contract' is still not covered by the legislation and science of the countries of Central Asia and Russia and, accordingly, requires further investigation not only for a better understanding of the SPP phenomenon, but in future even for the reception of this category. For example, in Russia, there is at least one precedent in law enforcement practice, when the Russian court essentially applied the concept of a 'relational contract' when considering the SPP dispute to justify the refusal to terminate the concession agreement due to the duration of legal relations[53]. In particular, Russian legal researchers note this court decision "as progressive and made by the court with the full sense of not only the legal aspects of the relationship between the parties to the concession agreement, but also the economic focus of the concession on long-term and partner relations. The court, in fact, called on the parties to resolve controversial issues in cooperation rather than claim termination of the agreement in court for every occasion and in the any conflict situation."[54]

3. PPP Concept and its Features in Domestic Practice

In the Central Asian countries and Russia, where the legal systems and the science of civil law are historically of common roots, obviously trend to the harmonisation of the SPP legislation and to the legislative recognition of the private law nature of an SPP agreement. At the same time, the harmonisation of the SPP legislations in the former Soviet Union countries is mainly within the framework of the Commonwealth of Independent State (CIS) and the Eurasian Economic Union (EAEU).

3.1.SPP Concept in the Domestic Practice

The concepts of 'SPP' and 'SPP agreement' are legal terms in Russia and all countries of Central Asia. Thereat, the legislations of these countries, in contrast to UNSITRAL, do not reduce the SPP concept to the concept of an agreement or contract. In particular, all Central Asian countries and Russia adopted specialised laws on state-private partnerships, which provide similar legal definitions of SPP such as "cooperation" or "form of cooperation", which corresponds to a certain features defined by law and which is implemented on the basis of a written agreement, i.e. SPP agreement.

At the same time, among all countries, only the SPP Law of Kazakhstan devotes a separate Article 4 to an exhaustive list of SPP features and Article 3 - to an exhaustive list of SPP principles.

[52] Marique, Yseult. (2014). Public-private partnerships and the law: Regulation, institutions and community. 10.4337/9781781004555. Introduction

[53] See for example: The Decision of the Arbitration Court of the Khanty-Mansi Autonomous Okrug-Yugra dated 12 August 2017 on case No. A75-12752/2017.

[54] Kachkin Denis. Grigoryev Andrey. A review of the most significant legal cases in the area of state-private partnership in 2018. AB Kachkin and partners. Available at: https://www.kachkin.ru/files/surveis/_2019_web.pdf. P 5.

Thereat, the SPP laws of Kyrgyzstan, Russia, Turkmenistan and Uzbekistan directly give lists of SPP principles only, apparently assuming that the SPP features must be independently developed by interpretation from the entire text of the SPP law and other applicable national legislation. Moreover, since the SPP Law in Tajikistan was adopted back in 2012, apparently it is the only law of all the SPP laws, which did not take into account the achievements in the model PPP law for the CIS member states[55], since it does not directly provide any signs or principles of SPP.

Noteworthy is the focus in the legislations of Russia and Central Asian countries on the substance of the SPP phenomenon rather than on its form. In particular, it differs from the internationally recognised understanding of public-private partnership not as a special type of civil law contract between a public entity and a private entity, but as 'cooperation', i.e., joint activity, namely joint investment activity, which must meet a number of criteria. The domestic doctrine of law also emphasises that SPP is a "type of joint investment activity", and an SPP agreement is only a "foundation of public-private partnership" and a type of investment agreements[56]. Moreover, based on the meaning of Article 6 of the CIS Model PPP Law, a PPP project can be implemented without concluding a PPP agreement at all, which, as mentioned above, is impossible from the international best practice perspective, by participating in a public-private partnership company, the so-called "institutional PPP «, and also «in any other forms»[57]. The fact that the understanding of the SPP phenomenon cannot be reduced to a narrow understanding of SPP as a special type of contract is supported by the fact that the structure of participants in relations arising within the SPP is not limited only to the parties to the relevant SPP agreement, which means that relations arising between entities that are not parties to the SPP agreement, but somehow involved in the joint investment activities of the state and private business, nevertheless, are relations within the SPP. The legislation of Kazakhstan, for example, clearly distinguishes between the concepts of "party to a state-private partnership agreement» and "subject of a state-private partnership"[58]. Moreover, Kazakh law assumes the possibility that the functional maintenance of a healthcare facility created as a result of a concession project in the area of healthcare would be the liability not of the concessionaire, which is only obliged to create the concession facility and ensure its maintenance, but of a third party engaged by the state, the so-called "functional operator in the area of healthcare"[59]. The functional operator in the area of healthcare is not a party to the concession agreement, although it will jointly operate and use the same concession facility with the concessionaire for the duration of the concession, such as a hospital, for the purpose of providing medical services. In this case, the relations that arise not only between the concessor and the concessionaire under a bilateral concession agreement, but also, obviously, between the

[55] Resolution of the Inter -Parliamentary Assembly of member estates of the Commonwealth of Independent States, dated 28 November 2014, No. 41-9. 'On the Model Law "On Public Private Partnership". (G. St. Petersburg) (hereinafter - the 'CIS Model PPP Law').
[56] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Sheveleva) (Infotropic Media, 2015). P 8.
[57] CIS Model PPP Law. Article 6.
[58] Pursuant to Article 1.14 of the SPP Law of Kazakhstan, "state-private partnership entities are the public partner and private partner, and other persons involved in the implementation of a public-private partnership project and specified by this Law."
[59] The Government of Kazakhstan appoints one of the state-controlled organisations, the statutory activity of which is the provision of medical care, as a functional operator in the area of healthcare. See Article 66 of the Code of the Republic of Kazakhstan dated 7 July 2020, No. 360-VI 'On the Health of the People and the Healthcare System'.

concessor and the functional operator in the healthcare area, as well as between the concessionaire and the functional operator in the healthcare area, which do not have any contractual relations with each other, are part of the same phenomenon, in particular, the state-private partnership that arose within this investment project. The functional operator in the area of healthcare, although being not a party to the concession agreement, is nevertheless a "subject of a state-private partnership". Therefore, the understanding of SPP as "a kind of joint investment activity" seems to be more correct and reflects reality. Domestic legal science in this matter, like modern English legal science, considers SPP as something more than just an agreement or contract, which is only its frame and one of the main qualifying features of SPP.

As for other SPP signs, which allows to distinguish SPP from all the various types of joint investment activities, the developers of the CIS Model PPP Law proposed to enshrine the goal of cooperation as one of the main qualifying signs of SPP, while the SPP goal must necessarily be "solution of state, municipal and other socially significant tasks that are in the area of public interest and control" [60]. In other words, SPP as a type of joint investment activity is distinguished by the fact that the state, as a mandatory participant in these specific investment relations, does not have the goal of making a profit, i.e., the state, when entering into SPP relations, carries out investment, but not business activities[61]. At the same time, a private partner being a part of the same investment relations carries out business activities, since the main purpose of his participation in an SPP project is, of course, making a profit. Therefore, the SPP uniqueness as a type of joint investment activity is the absence of a single goal for the activities of the state partner and the private partner participating in the investment relations arising within SPP, while both of them set the same tasks in achieving their goals. Indeed, according to the modern doctrine of law, the purpose of investment activity can be not only profit, but in some cases, for some participants in investment legal relations - another beneficial effect, which in the case of participation in the investment activity of a public legal entity should be expressed in the "common weal"[62]. I can't but disagree with Mr Popondopolo that "public-private partnership agreements are multilateral

[60] Thereat, the problem is that neither positive law, nor the theory of law in any of the Central Asian countries and Russia, apparently, have clear criteria or guidelines that can be applied in practice to understand what, for example, "socially significant tasks" and "public interest area". It is interesting that according to the 2019 UNCITRAL Legislative Guide on Public-Private Partnerships, the "public interest" test is applied only to the evaluation of so-called "unsolicited proposals", and not to all SPP projects. Obviously UNCITRAL assumes that all projects initiated by the state must be in the "public interest" by definition and such projects are not required to be tested for compliance with the "public interest". See: UNCITRAL Legislative Guide on Public-Private Partnerships for legislative authorities. Available at: https://uncitral.un.org/ru/lgppp. P 20.

[61] Here it is worth noting that according to the big names of the domestic civil law science, not all investment activities are business activities. See, for example, the article by Suleimenov M.K. Whether investment activity is always entrepreneurial one? Available at: https://online.zakon.kz/Document/?doc_id=31101913&pos=87;-39#pos=87;-39

[62] For example, Mr Popondopulo offers the following scientific definition of the concept of investment activity: "this is a set of lawful acts of will (omission) of the investor taken thereby at own risk and aimed at making a profit or other beneficial effect through the use of investment funds at his disposal." At the same time, under the investor Mr Popondopulo proposes to understand, *inter alia*, public legal entities represented by their competent authorities. Thereat, "Public legal entities invest on common
conditions specified by law, and make investments through the disposal of public property, for instance, by participating in public-private partnership projects. See: Popondopulo Vladimir Fedorovich, Investment Activity: Concept, Legal Forms of Implementation and Public Organisation // Pravovedeniye. 2017. No. 4 (333). URL: https://cyberleninka.ru/article/n/investitsionnaya-deyatelnost-ponyatie-pravovye-formy-osuschestvleniya-i-publichnaya-organizatsiya (date: 26.05.2022). P 215.

investment transactions, where the will of the participants is aimed at achieving a goal common for the participants through the cooperation of a private partner (investor). These agreements have common features that distinguish them from bilateral investment transactions, such as: a) a public goal of cooperation between a private and a public partner; essentially."[63] It seems to me that in this case, goals and tasks should not be confused, and the goals, as Mr Popondopolo correctly noted, can be different within the investment activities, in particular, within the PPP, the goal of a private partner is to make money, while the goal of a public partner is completely different - to achieve some "common weal". At the same time, both parties to an SPP agreement within achieving their different goals set the same task, including, for instance, the creation and operation of some kind of social infrastructure object, i.e., an SPP facility. It is indicative that only the SPP Laws of Kazakhstan and Kyrgyzstan directly establish the SPP tasks, however, they lack the need to solve state, municipal and other socially significant tasks being the public interest and control aea as a goal or task based on the best international practice[64].

The domestic legal literature emphasises the "balanced distribution of risks" between the public and private partners as the main qualifying feature of SPP, which allows to distinguish SPP from other institutions, including public procurement, privatization, lease of state property, etc.[65]. Interestingly, this SPP feature as an SPP principle is enshrined in the SPP laws of Kazakhstan, Kyrgyzstan, Russia and Turkmenistan, but is not directly spelled out in the SPP laws of Uzbekistan and Tajikistan, which, obviously, may entail a great risk of SPP "imitations" in Uzbekistan and Tajikistan in future. For instance, in the Bashkir, Tuva and Khanty-Mansi Autonomous Okrug court cases in Russia, the main reason why the Russian antimonopoly service and courts declared it inadmissible to reimburse all the costs incurred by the investor under the concession agreement at the expense of the budget is, in my opinion, just a violation of this, one of the main SPP signs. In their decisions, Russian courts in these three cases came to the same conclusion that since the concessor takes most of the project risks, the concession agreement, in fact, mask another transaction - a construction contract[66]. Therefore, although the formal arguments of the Russian antimonopoly authority in the Bashkir case were the impossibility of financing capital costs due to the prohibition of such a payment mechanism model by the Concessions Law of Russia, and in the Tuva case - a municipal need due to the fact that the construction of the facility is provided for by the regional program, and finally, in the Khanty-Mansiysk Autonomous Okrug case - the argument that cost recovery from the budget is a sign of municipal need, I believe that in all three cases the main reason, although not openly stated, that prompted the Russian antimonopoly authority to challenge the legality of these concession projects, was the violation of the SPP principle - balanced distribution of risks and incomes. This principle is violated since the full reimbursement of the concessionaire's costs from the state budget is prohibited, according to a literal interpretation, *inter alia*, the following rule in Article 3.13 of the Concessions Law of Russia: "the concessionaire has the right to assume part of the costs of creating and(or) reconstruction of the object of the concession agreement". To finally address this issue and

[63] Ibid. P 218.
[64] See Article 3 of the SPP Law of Kazakhstan and Article 3 of the SPP Law of Kyrgyzstan.
[65] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Sheveleva) (Infotropic Media, 2015). P 33.
[66] Novakovsky Andrey, Korneyev Mikhail. Article, dated 16 August 2021, 'FAS against concession. Chapter 3. KhMAO case.' Available at: http://www.lp.ru/fas_protiv_kontsessi

distinguish between state contracts and concession agreements, in February 2022, the Russian government commission on legislative activities approved a draft law that clearly stated that concession agreements should not provide for 100% compensation for the concessionaire's expenses for the creation and operation of the facility[67]. As soon as the draft law is adopted, the main difference between a concession and a state contract will be that concession agreements in Russia will allow to compensate up to 99.99% of the concessionaire's costs from the budget depending on the project.

The broadest legal definition of SPP among the legal orders considered in this article is given in the legislation of Kazakhstan, where SPP is divided into institutional and contractual according to the method of implementation, but both methods of implementing SPP in any case require the conclusion of an SPP agreement under Kazakh law[68]. At the same time, I am of the opinion that an SPP agreement in Kazakhstan is a generic legal institution of civil law, being de facto divided only into two types of SPP agreement: 1) a "non-concession" SPP agreement, and 2) a concession agreement, which are independent legal sub-institutions (i.e. different types of SPP agreement), which are considered, concluded and implemented under special separate laws on SPP and concessions, respectively, and by-laws[69].

A narrower definition, in terms of possible SPP forms, in comparison with Kazakhstan, is given in Russia, where only contractual SPP is possible. In particular, SPP in Russia is understood as a special contractual form of SPP, in particular an SPP agreement or an agreement on municipal-private partnership (hereinafter - the 'MPP'). At the same time, in Russia, there is de facto another contractual form of SPP, which does not fall under the legal definition of SPP, in particular, the concession agreement. Accordingly, SPP in the legal literature of Russia is understood more broadly than the narrow legal definition of SPP, in particular, in the broad sense, SPP in the doctrine of Russian law includes two contractual forms: an SPP or MPP agreement and a concession agreement.

A narrower understanding of SPP in comparison with Kazakhstan, in terms of SPP forms, is also given in the legislation of Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, where, like in Russia, only contractual SPP is allowed. Moreover, an SPP agreement in Russia and all countries of Central Asia is, according to the doctrine of civil law, the so-called named agreement, with its own special applicable legislation, i.e., a special SPP law and special by-laws in the area of PPP, which, among other things, details the requirements for the form, content, and the procedure for concluding an SPP agreement, and the procedure for initiating and selecting SPP projects and private partners. Accordingly, for example, such a contractual form of investment agreements with the participation of a public legal entity as an "investment agreement", which has long existed in

[67] An article on RBC 'The authorities plan to attract up to ₽1 trillion to infrastructure' dated 25 February 2022. Read more on RBC: https://www.rbc.ru/business/25/02/2022/620f76f39a7947760d96d98e?fbclid=IwAR36k6nNfKdLlN59yPcsgN1Bx7DySPK_8fxqaWx4jALCkgzVpoBVgSEmnMs

[68] I.e., Kazakh law does not imply SPP without concluding an SPP agreement, even if you choose an institutional method for implementing SPP. In case of an institutional SPP, the memorandum of association of the project company can serve as an SPP agreement.

[69] Chikanaev Sh.A. State-private partnership agreement as a new type of agreement in Kazakhstani civil law and problems of its qualification. Caspian Public University. ADILET Scientific Works Magazine No. 3, 2017.

the positive law of Uzbekistan, is not a type of SPP agreement and, obviously, investment activity under such an "investment agreement" is not an SPP from the perspective of the current law of Uzbekistan[70]. For the same reason, the so-called "investment agreement", as a special type of agreement in the law of Kyrgyzstan and Tajikistan, is not a type of an SPP agreement in terms of the current law of Kyrgyzstan and Tajikistan, respectively[71].

As for concessions, in addition to Kazakhstan, only in Uzbekistan, concession is considered at the legislative level as one of the types of contractual forms of SPP, while in Kyrgyzstan, Tajikistan and Turkmenistan, concession is not is a kind of contractual forms of SPP, neither from the point of view of the dogma of law, nor from the doctrine of law perspective, and in Russia, it is only considered in the legal literature and only in the broad sense of the concept of SPP. Accordingly, the so-called 'concession agreement' in the law of Uzbekistan, as it may seem, is a kind of SPP agreement. Thereat, in Uzbekistan, unlike Russia and all other Central Asian countries, there is no special law on concession, and, accordingly, the concession agreement under the current legislation of Uzbekistan is de facto an unnamed agreement, while in Kazakhstan and Russia there are special laws on concessions and, accordingly, concession agreements in Kazakhstan and Russia are named contracts, i.e., independent legal institutions, the consideration, conclusion and implementation of which is regulated by laws separate from those regulating SPP agreements[72]. At the same time, the distinction between 'concession SPP' and 'non-concession SPP' in Russia is based on who owns the PPP object, rather than using the criterion from international practice, which, as mentioned above, distinguishes these two types of PPP, depending on whether demand risk is transferred to the private partner. In Kazakhstan, despite the fact that there are two separate laws: the SPP Law and the Concessions Law, and each law is accompanied with a significant number of by-laws developed and constantly supplemented, there are no fundamental differences between 'concession SPP' and 'non-concession SPP'. In particular, in Kazakhstan, neither the criterion for transferring ownership of a PPP facility, which is used in Russia, nor the criterion for transferring demand risk to a private partner, which is used in world practice and UNCITRAL, has been introduced at the legislative level. Accordingly, there is no logic in the presence of two, in fact, overlapping laws. Thus, it is logical that from time to time in Kazakhstan the question arises that the SPP Law or the Concessions Law of Kazakhstan should lapse.

3.2.State Partner Concept in Domestic Practice

The state's participation in joint investment activities with private business, including the state's involvement as a party to the SPP agreement, is one of the SPP features, which is evident even

[70] See Article 1 of the Law of the Republic of Uzbekistan 'On Investments and Investment Activities', dated 25 December 2019, No. ZRU-598.

[71] See, for example: Article 11 of the Law of the Kyrgyz Republic 'On Investments in the Kyrgyz Republic' dated 27 March 2003, No. 66 and Article 3 of the Law of the Republic of Tajikistan 'On Investment Agreement', dated 19 March 2013, No. 944.

[72] The SPP Law of Uzbekistan just lightly touches the concession agreement, while according to the established opinion in the domestic legal literature, "the point of qualifying the agreement as named one is to apply certain legal provisions related to it. If there are no such provisions, then it hardly makes sense to talk about naming of such an agreement. In other words, the law must provide for any positive regulation of contracts, for example, in terms of requirements for the form, essential conditions, rights and obligations of the parties, etc. Accordingly, a contract can be considered unnamed, if there is no positive regulation provided for in the legislation, even if it is mentioned in any law or other regulatory legal act." See: Karapetov A.G., Saveliyev A.I. Freedom to conclude unnamed contracts and its limits // Bulletin of the Supreme Arbitration Court of the Russian Federation. No. 4, 2012

from the very name 'state-private partnership'. At the same time, it is important to determine who, according to the civil law, may represent the state in SPP projects This is important, among other things, so that the private partner, as well as creditor banks, can understand with whom exactly the SPP agreement is concluded and assess the reliability and creditworthiness of the person representing the state. In other words, a civil lawyer needs to determine which particular subject of civil law acts in this legal relationship in order to understand what kind of property this subject of law can and will use to be liable for its obligations under the SPP agreement.

First of all, it is worth noting that, according to the developers of the CIS Model PPP Law, not only the state, municipal or other public entity represented by a state authority, but also "other organisation authorised by a public entity through a law or other legal act to enter into agreements on public-private partnership can act as a public partner subject to the restrictions established by the relevant national legislation."[73] This approach obviously differs from the already mentioned UNCITRAL's viewpoint, which sees only a public authority as a public partner, i.e., obviously, a legal entity of public law. If any other organisation, even a private company without any state participation, will act as a public partner, this distorts the very essence of SPP, since there is no state participation, but instead there will be an ordinary commercial transaction between two private companies where both parties to the SPP agreement engage in business activities and are liable for their obligations with their private property, i.e., there will be a private-private partnership, even if approved by the state. Meanwhile, SPP is a type of joint investment activity, where only the private partner engages in business activities, while the public partner should not set a goal of making a profit from participating in SPP, which means that it cannot be commercial organisation. The UNCITRAL's approach to the concept of a public partner, therefore, seems to me more correct than the approach proposed by the developers of the CIS Model PPP Law.

Unlike most countries of the so-called developed legal order, in Russia and the Central Asian countries the concept of a legal entity of public law is not introduced in national legislations. Moreover, the domestic legal science of Russia and the countries of Central Asia, gives a prevailing opinion "about the need to distinguish between a legal entity, on the one hand, and the state and municipalities, on the other, it should be emphasised that it is inappropriate to introduce the category 'legal entity of public law' into our legislation."[74] It should be admitted, however, that a close equivalent of the European concept of 'legal entity of public law' in the law of Russia and the countries of Central Asia is, obviously, the concept of 'public legal entity'. Therefore, within the framework of the current legislation in Russia and, one can argue, in all countries of Central Asia, only a public legal entity can act as a public partner. However, as mentioned below in this article, formally in Uzbekistan and Kyrgyzstan, not only public law entities, but also legal entities in some cases can act as a state partner. At the same time, in the doctrine of civil law in Russia and the countries of Central Asia public law formations mean "the third type of subjects of civil law that exists along with citizens and legal entities", thus, for example, in Russia, public law formations "should be understood as the Russian Federation, constituent entities of the Russian Federation and municipalities" as a kind of "mono-subject", in the sense that a public legal entity is treated as "a single independent subject of civil law"[75]. In the Central Asian countries, the public

[73] CIS Model PPP Law. Article 14.
[74] Golubtsov V.G. The Russian Federation as a Subject of Civil Law. Moscow: Statut, 2019. P 65.
[75] Ibid. P 69.

law entity means the state and administrative-territorial organisations, i.e., regions and cities, and in the case of Uzbekistan - the Republic of Karakalpakstan as well.

Please note that within the framework of the current national legislations of Russia and the countries of Central Asia, it is the public legal entity, which act as the party to an SPP agreement, and not the state authority or local government, since the authorities in our legal order do not have independent legal personality in terms of civil law. State authorities and local governments, therefore, when acquiring and exercising property rights and obligations under an SPP agreement, act not on their own behalf, but within their competence on behalf of the relevant public legal entity. Therefore, although, for example, the concept of 'public partner' in Article 2 of the SPP Law of Tajikistan is defined as "central or local public authority", the interpretation of this legal definition should be based on the category of subjects of civil rights in the civil law of Tajikistan, including provisions of Articles 136 and 137 of the Civil Code of the Republic of Tajikistan, in particular, in this case it means that the state partner should mean the Republic of Tajikistan or an administrative-territorial unit, on which behalf the central or local state authority acts. Similarly, the mention of the "Government of the Republic of Kazakhstan" as a potential concessor in the legal definition of 'grantor' in the Concessions Law of Kazakhstan shall be treated as a mistake, since the Government of the Republic of Kazakhstan is a collegial authority and is not a subject of civil law, and therefore does not have any property and cannot enter into any civil law contracts on its own behalf.

I think, in Kyrgyzstan and Turkmenistan, only the state itself, i.e., the Republic of Kyrgyzstan and the Republic of Turkmenistan, can act as a state partner, while in Kazakhstan, Tajikistan and, one can argue, in Uzbekistan, the so-called administrative-territorial unit, i.e. region or city, depending on the level of implementation of the SPP project, as well as the Republic of Karakalpakstan, in the case of Uzbekistan, can act as a state partner in addition to the sate itself. Finally, in Russia, given its legal structure as a federal state, in addition to the state and the municipality, the constituent entities of the Russian Federation can also be a public partner.

At the same time, please note that due to the imperfection of legal technique and gaps in national legislation, there is still uncertainty in understanding of the legal definition of 'public partner' in the legislation of Kazakhstan, Kyrgyzstan and Uzbekistan. Once again, the category of 'subject of civil law' in the national civil law of the relevant jurisdictions should help to solve this problem.

For example, there is still an internal inconsistency in the Kazakh legislation, which gives rise to the debate about the legal definition of 'public partner'. In particular, according to the literal interpretation of the 'public partner' in Article 1 of the SPP Law of Kazakhstan, it is the state only, i.e. the Republic of Kazakhstan, which can act as a public partner, on which behalf, rather than on own behalf, state authorities, state institutions, state enterprises and limited liability partnerships, joint-stock companies, fifty or more percent of the shares in the authorised capital or voting shares of which directly or indirectly belong to the state, act. However, according to the systematic interpretation of the applicable provisions of the law of Kazakhstan, including budgetary legislation, and given that the subjects of civil law in Kazakhstan are, among other things, administrative-territorial units, not only the Republic of Kazakhstan can de facto act as a state partner in Kazakhstan, but also administrative-territorial units, in particular: region, city of republican significance, the capital. A similar understanding shall apply to the legal definition of

'concessor' in the Concessions Law of Kazakhstan: i.e., only the Republic of Kazakhstan or an administrative-territorial unit (region, or a city of republican significance, or the capital) can be a concessor in Kazakhstan.

Even more imperfect legal technique and respective ambiguity in the interpretation of the legal definition of 'public partner' is given in the SPP Law of Kyrgyzstan[76]. Thus, it is debatable that the legal provision in Article 4 of the SPP Law of Kyrgyzstan suggests that not only the Kyrgyz Republic as a subject of civil legal relations can act as a state partner in Kyrgyzstan. In particular, according to my literal interpretation of this provision, including the keyword 'jointly', in large SPP projects, the Kyrgyz Republic can act as the sole state partner only jointly with other organisations listed in the law, i.e., apparently, as a simple partnership, by signing an agreement on joint activities by two or more persons (partners), who undertake to combine their contributions and act jointly without forming a legal entity to make a profit or achieve another goal that does not contradict the law[77]. At the same time, the SPP Law of Kyrgyzstan defines possible partners as the so-called 'local governments' acting obviously on behalf of the relevant administrative-territorial unit, as well as state, municipal enterprises and institutions, joint-stock companies, where 50 or more percent of voting shares belong to the state, in the relevant area of operation, acting obviously on their own behalf. Given that when entering into legal relations within the framework of SPP, the state partner should not pursue profit making as the only goal, but should serve the 'public interest'', such a simple partnership agreement will not be associated with the implementation of business activities by its participants, which means that in the Kyrgyz civil law perspective, not only commercial organisations can be partners, and for general contractual obligations, each partner (i.e., the Kyrgyz Republic, as well as administrative-territorial units, state, municipal enterprises and institutions, joint-stock companies, where 50 and more than a percent of the voting shares belong to the state) shall be liable with all its property in proportion to the their contributions to the common cause - i.e., the contribution to the performance of the state partner functions[78]. Kyrgyz lawyers emphasise that "one of the fundamental conditions for the creation of a simple partnership is the contribution of its participants. Participants in a simple partnership may invest money, other movable property, as well as land plots and other real estate, professional or practical knowledge, as well as business reputation and business connections in a common cause."[79] In this case, the public partner, respectively, will be a simple partnership, i.e., the Kyrgyz Republic together with a group of persons (partners), and the Kyrgyz Republic and other partners will invest in the common cause everything that can be invested and is necessary for the proper performance of the functions of a public partner in a SPP project. The Kyrgyz legal literature, however, provides for an alternative interpretation of this provision in Article 4 of the SPP Law of Kyrgyzstan, which suggests the possibility of multiple persons on the side of the public partner: "literal interpretation of the provisions of the New SPP Law suggests that in SPP projects with an investment amount of

[76] According to Article 4 of the SPP Law of Kyrgyzstan, "the competent state authorities in the area of SPP jointly with state authorities, local governments, state, municipal enterprises and institutions, joint-stock companies, where 50 or more percent of voting shares belong to the state, in the relevant activity areas, or state authorities, local governments, state, municipal enterprises and institutions, joint-stock companies, where 50 or more percent of voting shares belong to the state in the relevant activity areas for small projects, may act as the state partner."
[77] See Article 970 of the Civil Code of the Kyrgyz Republic.
[78] See Article 970.2 and Article 976.1 of the Civil Code of the Kyrgyz Republic.
[79] Marchenko Tatiana. LORENZ International Law Firm. Article 'Legal Aspects of Joint Business Activities', dated 29 April 2009. Available at: http://www.lorenz-law.com/wp-content/uploads/290409-article-re-consortium-rus.pdf

over 100 million soms there must be 2 state partners, who jointly conclude an SPP agreement with a private partner. The requirement for 2 state partners is not entirely clear; besides, it is not clear what was the practical need for such a requirement[80]. This interpretation, however, does not answer how it is supposed to regulate issues, for example, the responsibility of each of the public partners, i.e., whether they are supposed to be jointly and severally liable? Even more confusing is the fact that neither the legislation of Kyrgyzstan nor the legal science of Kyrgyzstan has yet decided on an exhaustive list of subjects of civil law. On the one hand, according to the civil legislation of Kyrgyzstan, "participants of relations regulated by civil law are citizens, legal entities and the state" and, accordingly, only the Kyrgyz Republic can be a subject of civil law among all possible public legal entities[81]. On the other hand, the subject of property rights in Kyrgyzstan can be not only the Kyrgyz Republic, but also, apparently, an administrative-territorial unit, since according to the civil legislation of Kyrgyzstan, "property can be owned by citizens, legal entities, the state, as well as local authorities", and "a local community may own any property necessary for the implementation of its functions (municipal property)."[82] At the same time, only the relevant local government authority apparently can act on behalf of the administrative-territorial unit in civil law relations, since according to the imperative norm of civil law, "the disposal and management of municipal property is carried out by the local government authority, which has the rights of a legal entity"[83]. In particular, the legal literature of Kyrgyzstan notes that "subjects of civil law include individuals, legal entities, and the state represented by its competent authorities and, according to some scientists - local governments."[84] The fact that the state partner can be an administrative-territorial unit represented by the relevant local government authority is indirectly confirmed by the aspect that the legislation of Kyrgyzstan provides for, *inter alia*, funds not only of the republican, but "and (or) of the local budget", as well as not only state property, but "and/or municipal property administered by the public partner" as sources of investment in the implementation of the SPP project."[85] Since the 'local government authority', in my opinion, does not have an independent legal personality and, accordingly, cannot be a subject of civil law, while the 'local community' means some set of citizens of the Kyrgyz Republic permanently or predominantly residing in the corresponding territories, then 'local community' also cannot be considered as a separate subject of civil law. Therefore, I consider it possible and necessary to interpret the legal definition of 'public partner' in the Kyrgyz legislation in such a way that in practice, both in large and small SPP projects, only the Kyrgyz Republic can act as a public partner, and state authorities, local governments, state, municipal enterprises and institutions, joint-stock companies, where 50 percent or more voting shares are owned by the state, etc., can only act on behalf of the Kyrgyz Republic, within their competence, but not on their own behalf.

[80] Magomed Saaduyev, Partner at K&Legal Law Firm (Kalikova & Associates), Article 'New SPP Law: An Analysis of Law Enforcement Practice'. 23 September 2021. Available at: http://www.k-a.kg/ru/novyi-zakon-o-gchp
[81] Article 1.3 of the Civil Code of the Kyrgyz Republic.
[82] See Article 223.1 and Article 227.1 of the Civil Code of the Kyrgyz Republic, respectively.
[83] See Article 227.3 of the Civil Code of the Kyrgyz Republic.
[84] Kozhakhmetova D.A. Article 'The Concept and Principles of the Exercise of Civil Rights.' Available at: http://centradvokatov.kg/science/ponyatie-i-printsipy-osushhestvleniya-grazhdanskih-prav-avtor-kozhahmetova-d-a/
[85] See Article 7.2 of the SPP Law of Kyrgyzstan.

Like in Kyrguz law, there is the same problem with legal technique and interpretation of the legal definition of 'state partner' in Uzbek law[86]. According to some Uzbek lawyers, the current legal definition of a state partner allows not only the Republic of Uzbekistan, but also ministries, state institutions, local municipalities and other competent authorities to enter into SPP agreements as a state partner on their own behalf, thereby "reducing or limiting the amount of direct liability of the state in PPP projects while maintaining its conditional liability in full"[87]. However, I consider this opinion unsound, since state administration authorities, including ministries, local executive authorities, including municipalities, are not subjects of civil law and, accordingly, do not have legal personality and cannot enter into any civil law contracts on its own behalf[88]. It is interesting that the legal definition of a 'state partner' in Uzbek law in theory allows, by a simple resolution of the Cabinet of Ministers of the Republic of Uzbekistan, to authorise any legal entity, even a company without any state participation, as actually required in Kyrgyz law, to act as a state partner and be liable for its own obligations under the concluded PPP agreement with their private property rather than property of any public legal entity. For example, on 22 September 2021, in Uzbekistan, without holding any open tender, a PPP agreement was concluded between Uzbekistan Airports JSC, acting as a state partner, and LLC AIR MARAKANDA IE, acting as a private partner, on the project of modernisation and management of Samarkand international airport. Although Uzbekistan Airports JSC is a company with 100% state participation, however, it is nevertheless a private company, which means that it does not meet the above-mentioned distinguishing features of the so-called legal entity of public law, which, according to the best world practice of UNISTRAL, can act as a public partner. In particular, Uzbekistan Airports JSC is a private law entity, not a public law entity, which main purpose is to make a profit in the business activity rather than 'common weal'. Moreover, Uzbekistan Airports JSC apparently does not have public authority. It is not clear therefore, how Uzbekistan Airports JSC is supposed to perform the obligations of a state partner, which are expressly provided for by law, but which are only within the power of the relevant public body with the appropriate competence, i.e. the ministry or other authority acting on behalf of the state[89]. To even partially solve this problem, in particular, to provide an opportunity for the purposes of implementing SPP projects where a state partmer is represented by legal entities, which independently do not have the right to perform public functions, including budget funds using to pay for accessibility within an SPP agreement,

[86] Pursuant to Article 3 of the SPP Law of Uzbekistan, "the state partner is the Republic of Uzbekistan and(or) government authorities, local executive authorities, as well as other legal entities or their associations authorised by the Cabinet of Ministers of the Republic of Uzbekistan."

[87] The Public-Private Partnership Law Review, Chapter: Uzbekistan, by Nail Hassanov and Jakhongir Olimjonov, Kosta Legal, Law Business Research, The Law Reviews, March 2022.

[88] Pursuant to Article 2 of the Civil Code of the Republic of Uzbekistan (Part One) (approved by the Law of the Republic of Uzbekistan dated 21 December 1995 No. 163-I), "participants of relations regulated by civil law are citizens, legal entities and the state." Accordingly, a ministry or any other public administration or local executive authority in some cases may have legal personality in private law relations, but only if in this particular case the ministry, like two-faced Janus, acts not as a public authority, but as a state institution, i.e. legal entity. Nevertheless, even as a state institution, a government authority does not have the right to act on its own behalf as a state partner, since state institutions are in legal order of the countries of the former Soviet Union a special organizational and legal form of legal entities that do not have their own property and, in principle, do not have the right to engage in investment activities.

[89] For instance, pursuant to Article 14 of the SPP Law of Uzbekistan, the state partner shall, among other things, "assist the private partner in obtaining licenses and permits necessary for the implementation of the state-private partnership agreement."

in addition to the concept of 'SPP agreement', the Uzbek law introduced the concept of the so-called "state support agreement"[90]. For instance, on 11 April 2022, the relevant state support agreement between the Ministry of Finance of the Republic of Uzbekistan and LLC Air Marakanda IE was signed. Nevertheless, I think the expediency of introducing the concept of 'state support agreement' is quite doubtful, since all issues arising in SPP can and should be resolved within an SPP agreement. Instead of introducing a new type of contract into Uzbek law, it would be more logical to bring the legal definition of 'state partner' in line with the best world practice, i.e., to limit the concept of 'state partner' only to public legal entities At the same time, the current Uzbek law, like Kyrgyz law, as described above, does not provide a clear and exhaustive list of civil law entities, including whether administrative-territorial organisations and the Republic of Karakalpakstan are subjects of civil legal relations under Uzbek law and, accordingly, whether they can enter into any transactions, including SPP agreements It can be argued that not only the Republic of Uzbekistan, but administrative-territorial units and the Republic of Karakalpakstan as well can be a participant in not only real, but also obligatory civil law relations in Uzbek civil law[91]. Accordingly, the concept of 'state partner' as a subject of civil law relations in Uzbekistan shall mean, apparently, not only the Republic of Uzbekistan, but also the regions and the city of Tashkent as administrative-territorial units and, obviously, the Republic of Karakalpakstan[92]. Unfortunately, the current budget legislation of Uzbekistan, unlike the budget legislation of Kazakhstan as an example, does not directly and clearly define how administrative-territorial units and the Republic of Karakalpakstan can assume state obligations under an SPP agreement. Based on a literal interpretation of the applicable norms of the Budget Code of Uzbekistan it, however, can be assumed that the liability of the public partner is secured by the budget of the relevant region or city of Tashkent or the budget of the Republic of Karakalpakstan, if, respectively, the region, city of Tashkent or the Republic of Karakalpakstan acts as a public partner. The Republic of Uzbekistan, therefore, will not be liable for the obligations of such a state partner with its republican budget, directly or indirectly, despite the different opinion of some Uzbek lawyers that some kind of 'conditional liability' of the state stall remains, as mentioned above.

3.3.Concept of SPP Object in the Domestic Practice

An interesting approach is in the CIS Model PPP Law to such an important category for a correct understanding of SPP as "SPP object", which is conceptually different from the UNCITRAL

[90] Pursuant to Article 38 of the SPP Law of Uzbekistan, "A state support agreement is a written agreement signed between the Republic of Uzbekistan and a private partner, which provides for the provision of additional guarantees and support (benefits and preferences) to the private partner and(or) creditors. The state support agreement for the implementation of state-private partnership projects is signed on behalf of the Republic of Uzbekistan by the Ministry of Finance of the Republic of Uzbekistan."

[91] Pursuant to Articles 2 and 79 of the Civil Code of Uzbekistan, we are talking about the state as a participant in civil law relations only, while administrative-territorial entities, in contrast, for example, to the Civil Code of Kazakhstan, are not directly mentioned as subjects of civil rights. However, according to Article 213 of the same code, "public property is state property, which consists of republican property and property of administrative-territorial entities (municipal property)." Accordingly, it is most likely that the concept of "state" should be interpreted as a collective term that includes such independent entities as the Republic of Uzbekistan, an administrative-territorial unit and the Republic of Karakalpakstan.

[92] Based on the literal interpretation of the legal norms in Article 68 of the Constitution of Uzbekistan and in Article 34 of the Budget Code of Uzbekistan, among all possible administrative-territorial entities, only the regions, the city of Tashkent and the Republic of Karakalpakstan have their own budgets and, therefore, can act as a state partner and be liable for their obligations under concluded SPP agreements.

approach, since, in addition to things, the SPP facility may include other property, including property rights for the purposes of the Model Law, as well as the results of work and the provision of services, provided that they are "in the area of public interest and control"[93]. The CIS Model PPP Law, unlike the UNCITRAL Model Legislative Provisions on Public-Private Partnerships, accordingly, is not limited to 'public infrastructure', i.e., movable and immovable things or their interconnected aggregates, as an SPP object. At the same time, it is again not entirely clear how the developers of the CIS Model PPP Law assume that the compliance of the SPP object with the 'public interest' will be assessed, as I have already noted above.

From the perspective of the Russian doctrine of law, "the PPP object can be any thing and, strictly speaking, almost any object of civil law not prohibited in circulation - movable and immovable things, property rights, results of work and provision of services; protected results of intellectual activity and equated means of individualisation"[94]. At the same time, despite such a comprehensive understanding of the SPP object in Russian legal science, it is the Russian positive law that gives the narrowest legal definition of the SPP object in comparison with all the countries of Central Asia, since both the SPP and MPP Law and the Law on Concession Agreements of Russia provide for exhaustive lists of the possible objects of SPP/MPP agreement and the concession agreement, respectively.

In particular, in positive law, the broadest definition of an SPP object is given in the SPP Law of Kazakhstan, which, first, includes property, and according to the civil legislation of Kazakhstan, property includes all possible property benefits and rights, including things, works, services , objectified results of creative intellectual activity, digital assets and other property[95]. Second, it is especially emphasised that the SPP object in Kazakhstan can be property complexes, as well as works (services) and innovations, which are understood as «a new or improved result of innovative activity in the form of a product (goods, work or service)» while I think this is unnecessary, since the concept of property already covers all these objects of civil rights[96]. Due to too broad legal definitions of 'SPP', 'SPP object', as well as the fact that state-private partnership in accordance with Article 6 of the SPP Law of Kazakhstan can be implemented in all sectors (areas) of the economy, the problem of SPP 'imitations' is acute in Kazakhstan, i.e., the conclusion of sham transactions in the form of SPP agreements, which in fact are not SPPs and must be implemented under public procurement contracts. As an example, the projects to reduce the number of midges, teach the population the state and English languages, build multi-apartment residential buildings with commercial premises, and the like were implemented as SPPs within the framework of the SPP Law of Kazakhstan. In Kazakhstan, there are already precedents of challenging and even terminating SPP agreements, including due to a misunderstanding of the category 'SPP object'[97]. For instance, in one of the recent court disputes considered by the Supreme Court of Kazakhstan,

[93] CIS Model PPP Law. Article 2.
[94] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Shevelyova) (Infotropic Media, 2015). P 271.
[95] See Article 115 of the Civil Code of the Republic of Kazakhstan.
[96] See Article 241-1.3 of the Entrepreneurial Code of the Republic of Kazakhstan dated 29 October 2015, No. 375-V.
[97] According to public information, as of August 2021, 52 SPP agreements in Kazakhstan were terminated for various reasons. See: Nurlan Sakuov. Nazgul Uzalina. Article dated 31.08.2021 on the information platform Inbusiness.kz. PPP in Kazakhstan - no partnership yet https://inbusiness.kz/ru/news/gchp-v-kazahstane-partnerstva-poka-ne-sostoyalos

the defendant - a state authority that challenged the validity of the SPP project as not complying with the requirements of the law, stated that school canteens with equipment and furniture in several separate schools are not property complex and, therefore, cannot be treated as an SPP object. The Supreme Court considered this argument unfounded, because "the SPP object is not a property complex, but a complex of school canteens with equipment and furniture. School canteens as part of the property of a secondary school can be an SPP object. This cout's conclusion, first, follows from the requirements of Article 116.1 of the Civil Code, which provides for the transferability of objects of civil rights.»[98] The conclusion of the Supreme Court of Kazakhstan seems to me disputable, since based on Russian law enforcement practice, the combination of several unrelated homogeneous objects, for example, several school canteens, as in this case, where the objects are combined not by technology, but by economic reasons, in one SPP agreement can be regarded by the antimonopoly authority as a restriction of competition, which is prohibited by law[99].

Unlike the SPP Law, the Concessions Law of Kazakhstan gives a narrower legal definition of a 'concession object' as "objects of social infrastructure and life support", i.e., "objects, complexes of objects used to meet public needs to by supported by the state authorities in accordance with the legislation of the Republic of Kazakhstan»[100]. The Concessions Law of Kazakhstan, accordingly, in this regard, follows the best world practice of UNCITRAL to consider only "public infrastructure" as an SPP object, it is not surprising, therefore, that there have not been any special problems with abuses with the concession form of SPP, in contrast to the non-concession form of SPP, in Kazakhstan yet.

Kyrgyzstan, Uzbekistan and Turkmenistan may also fall into the same rake as Kazakhstan in the near future, since the SPP Laws in these countries give a too broad and in many respects similar to Kazakhstan legal definition of an SPP object, while not enshrining at the legislative level the requirement that such objects should be "in the area of public interest and control", as proposed in the CIS Model PPP Law, or that not any object can be considered as an SPP object, but only those that can be used "to provide the most important services for the population or placement of suppliers thereof", according to the best international practice of UNCITRAL.

In Uzbekistan, for instance, any property can be an SPP object, i.e., according to Article 83 of the Civil Code of Uzbekistan, it can be real estate and movable property, as well as property complexes, public infrastructure, works (services) and innovations[101]. Like in Kazakhstan, state-private partnership in Uzbekistan can be implemented in all sectors (areas) of the economy, but there is a significant difference from regulation in Kazakhstan, in particular, the legislation of Uzbekistan directly excludes investments in prospecting, exploration and extraction of minerals in the territory of the Republic of Uzbekistan from the SPP sector, since they shall be carried out

[98] See Resolution of the Judicial Chamber for Civil Cases of the Supreme Court of the Republic of Kazakhstan dated 12 May 2021, No. 6001-21-00-3GP/171.
[99] See, for example, Practical Commentary on the Federal Law 'On Concession Agreements' (by-article generalisation of arbitration practice)/Endorsed by Yu.E. Tuktarov and A.I. Dorokhov. - Moscow: Statut, 2020. P 56.
[100] See Article 1 of the Concessions Law of Kazakhstan.
[101] See Article 3 of the SPP Law of Uzbekistan.

under another type of investment agreement with the participation of a public legal entity - the so-called production sharing agreement[102].

In Turkmenistan, there is the same situation, in particular, any property can be an SPP object, i.e., according to Article 166 of the Civil Code of Turkmenistan, it can be any thing or soft benefit as well as property complexes, public infrastructure, works (services) and innovations[103]. At the same time, state-private partnership in Turkmenistan can be implemented in all sectors (areas) of the economy, except for the exploration, production and processing of hydrocarbon resources and the performance of other types of oil work in the territory of Turkmenistan, since such activities should be carried out under a different type of agreement - the so-called oil work agreement. Besides, specialised activities related to ensuring law and order, defense and security of the state cannot be implemented within the framework of SPP in Turkmenistan[104].

In Kyrgyzstan, the description of the SPP object is mentioned as an essential condition of the SPP agreement in Article 14 of the SPP Law of Kyrgyzstan, while there is no legal definition of the SPP object. The SPP object in Kyrgyzstan means, obviously, the so-called 'infrastructure services', i.e. «works and/or services of social, economic or industrial purpose», as well as 'infrastructural object', i.e. «property or property complex of social, economic or industrial purpose, which is in state, municipal or private ownership.»[105] Given that the criterion of "social, economic or industrial purpose" is not specified in any way in the legislation, practically any property, as well as works and services, falls under this extremely extended criterion. Therefore, I am of the opinion that in Kyrgyzstan de facto any property, i.e., according to Article 22 of the Civil Code of Kyrgyzstan, including things, property rights, works and services, can be an SPP object. State-private partnership in Kyrgyzstan can be implemented in all sectors (areas) of the economy, except for projects related to the subsoil use[106].

Russia and Tajikistan preferred to give a narrower concept of an SPP object, compared to other Central Asian countries, which, in my opinion, is the most reasonable approach, given the local mentality in our countries and the risks of abuse of the PPP mechanism and using it to avoid public procurement. In Russia, for instance, Article 7 of the SPP Law of Russia establishes a closed, exhaustive list of objects that can act as the object of an SPP or municipal-private partnership (MPP) agreement, i.e., in essence, an SPP object. Moreover, as a general rule, the object of an SPP (MPP) agreement is only real estate, as well as movable property, if it is technologically connected with real estate as provided by the legislation. Therefore, it is impossible to structure the project as SPP for those objects that are not specified in the SPP Law of Russia. A similar approach Russia applies to concessions, although the legal literature notes that "according to Russian legislation, the concept of an SPP object is broader than the object of a concession agreement"[107]. At the same time, Russian legal scholars note the problems "that arise in practice regarding the determination

[102] See Article 1 of the SPP Law of Uzbekistan and Article 1 of the Law of the Republic of Uzbekistan 'On Production Sharing Agreements' dated 7 December 2001, No. 312-II.
[103] See Article 3 of the SPP Law of Turkmenistan.
[104] See Article 1 of the SPP Law of Turkmenistan.
[105] See Article 5 of the SPP Law of Kyrgyzstan.
[106] See Article 2.1 of the SPP Law of Kyrgyzstan.
[107] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Shevelyova) (Infotropic Media, 2015). P 272.

of the composition of property that may be included in the structure of the objects of the SPP agreement. Judicial practice faces difficulties in this respect. In particular, the question arises whether motor roads and their sections, as independent objects, are classified as immovable things or not.» [108]

There is no legal definition of an SPP object in Tajikistan. However, based on a literal interpretation of the applicable norms of the SPP Law of Tajikistan, including the legal definitions of 'infrastructure', as well as "project for the provision of social services" in Article 2, an 'SPP object' in Tajikistan should obviously mean 'public infrastructure' according to UNCITRAL international practice, i.e., "economic infrastructure" and "social infrastructure" in the form of things, i.e., movable and immovable property, and property complexes consisting of such movable and immovable things necessary for "improving the conditions for the life of society[109]. At the same time, state-private partnership in Tajikistan can be carried out in all sectors (areas) of the economy, except for projects related to the provision of any subsoil use rights[110].

3.4. Legal Nature of SPP and SPP Agreement in Domestic Practice

The institution of an SPP agreement in different countries are institutions of private or public law, depending on whether the British SPP model, featured as private law, or the French SPP model, featured as public law, is chosen in the relevant jurisdiction. What SPP model is better and preferable is necessary to decide, obviously, based on what goals are in priority in a particular society at a particular historical moment in terms of using the PPP mechanism: cohesion of society, bringing certainty and regularity into the relevant area of life with the help of an SPP agreement as an institution of the public law, or increasing private interest and private initiative through an SPP agreement as an institution of the public law. According to Pokrovsky I.A., both the method of legal regulation of public law and the method of regulation of private law "are theoretically applicable to any area of public relations. In any case, each of these methods has its own social value.»[111] In Germany and France and other countries that have chosen the French SPP model, respectively, have chosen the public law approach for the purposes of regulating the SPP agreement in the form of an administrative contract, since, apparently, in these countries the priority is given to the goals that are achievable only through the use of public law.

Unlike the institution of the SPP agreement, the institution of an SPP itself (which, in my opinion, is a legal institution although related, but different from the SPP agreement) is difficult to expressly refer to the area of either private or public law, if it is possible, since, *inter alia*, «the border

[108] See: Dyatlova N. A. Objects of a state-partnership agreement as a factor in the formation of a competitive environment // Competition Law. 2017. No3.
[109] Pursuant to Article 2 of the SPP Law of Tajikistan:
"infrastructure is a set of constructions, buildings, systems and structures necessary for the functioning of production industries, the creation or improvement of the living conditions of society, including the transport system, water and energy supply, roads, bridges and communication systems"
"a project for the provision of services in the social area is the design, development and operation of any structures that directly or indirectly provide social services to the public for a period of at least three years (household, medical, psychological, pedagogical and other services) that were subordinate to the customer organisation prior to the project launch."
[110] See Article 1.3 of the SPP Law of Tajikistan.
[111] Pokrovsky I.A. The Main Problems of Civil Law. 7th ed., - Moscow: Statut, 2016. (Classics of Russian civil law). ISBN 978-5-8354-1261-7 (in trans.). P 47.

between public and private law throughout history has not always went in the same place»[112]. With regard to the institution of SPP, accordingly, such a border between public and private law, both in national legislation and in modern legal literature, has not yet been clearly defined and, perhaps, cannot be determined in principle. However, thanks to the recently accelerated global harmonisation of SPP legislation and the unification of the legal definition of SPP, the conclusion can be already made that SPP should be considered as a complex legal institution *sui generis* that contain both private and public law. The Russian legal literature, for instance, notes that since "SPP is governed by the norms of various branches of law: civil and business (in terms of concluding, changing and terminating its contractual legal forms), administrative (in terms of determining the competence of authorized bodies), and also tax (providing tax preferences), land, etc., therefore, the legal nature of SPP is all-inclusive.»[113] Indeed, in the national legislations of Russia and Central Asian countries, the understanding of SPP is not limited to the concept of an SPP agreement, in contrast to the international practice of UNISTRAL, as mentioned above, the SPP is to be necessary considered as an economic concept rather than a legal category. From the law perspective, the SPP as a certain type of joint investment activity is to be qualified as a complex legal institution containing elements of both public and private law, i.e., an institution of legislation rather than an institution of law.

As for the legal nature of an SPP agreement, both the domestic science of law and the current legislation of Russia and all Central Asian countries consider SPP agreement as a civil law contract and, accordingly, as an institution of civil law, since under an SPP agreement, relations arise between legally equal entities being not in any subordination and property dependence with each other. Tajikistan may be an exception, since, according to Article 2 of the SPP Law of Tajikistan, an "SPP agreement" is a "legal act", i.e., it turns out to be an official written document expressing power orders, i.e., obviously, a public law contract. Thus, an SPP agreement in the dogma and doctrine of the law of Russia and the countries of Central Asia is a named civil law contract with its own applicable legislation and, therefore, all the principles and concepts of civil law apply to it, including the principle of freedom of contract, *pacta sunt servanda*, legal right to damages, and so on.

In particular, the civil codes of all the countries of Central Asia and Russia equally establish that the relevant public law entities, i.e., the state, administrative-territorial unit, municipality or, if applicable, the constituent of the Russian Federation, act in relations regulated by civil law on an equal footing with other participants in these relations. So all relevant public law entities are subject to the rules governing the participation of legal entities in civil law relations. Moreover, the civil legislation of all the countries of Central Asia and Russia provides that each public legal entity acting as a state partner is liable for its obligations only with its property, i.r., either the state treasury or the budget, if the state acts as a state partner, or the local treasury or local budget, if the administrative-territorial unit or municipality acts as a state partner and is not liable for the obligations of another public legal entity, including SPP obligations. Thereat, it is obviously impossible to talk about the complete legal equality of the parties to an SPP agreement, since

[112] Ibid. P 44.
[113] Gromova, E.A. State-Private Partnership and Its Legal Forms: Textbook/E.A. Gromova. - Moscow: Yustitsinform, 2019. - 84 p. - ISBN 978-5-7205-1499-0. - Text : electronic. - URL: https://znanium.com/catalog/product/1046022 (date of access: 16 May 2022). P 4.

national SPP legislation often directly provides for more rights to the state, whereby in a sense violating the principle of legal equality of participants in civil legal relations. Kazakh law, for instance, provides for a special right of a state partner to terminate an SPP agreement by a court decision "in the interests of society and the state, including when such actions are performed in order to ensure national security, public health and morality."[114] Uzbek law, on the other hand, deliberately puts the private partner in a dependent position and require the prior consent of the competent state authority or the Cabinet of Ministers of the Republic of Uzbekistan for any change, addition or termination of an SPP agreement, whether by agreement of the parties or by court decision, under an SPP project with a total cost of the equivalent of over one million US dollars or ten million US dollars, respectively[115]. In other words, everything goes like in the classic parable of George Orwell, all subjects of civil law are obviously equal, but the state is more equal than others.

The CIS Model PPP Law defines a public-private partnership agreement as a civil law contract and, in addition, clarifies that PPP agreements are "mixed contracts", which means that relations arising from PPP agreements are subject to some extent to the rules of the applicable national civil law on contracts, the elements of which are contained in the PPP agreement[116]. In the Russian legal literature, there is also a prevailing opinion that the SPP (MPP) agreement in Russia is a mixed contract[117]. In Kazakhstan, in my opinion, an SPP agreement is a named mixed contract with priority regulation of disputed relations by the SPP Law of Kazakhstan[118]. In other countries of Central Asia, an SPP agreement is also obviously not only a mixed, but a named contract in terms of the applicable national civil law, since there are certain legal rules that apply only to this type of agreement. A concession agreement in Russia is also directly determined as a mixed contract at the legislative level[119]. At the same time, in Kazakhstan, a concession agreement, in my opinion, is an independent, but not a mixed contract[120]. The practical significance of this conclusion is that the absence in the Law on Concessions of Kazakhstan and the corresponding "concession" by-laws of any special rules governing relations arising from the concession agreement, shuts out the application of other rules governing other contractual obligations. In this case, only general provisions on obligations and contracts are subject to subsidiary application.

Please note that in the domestic legal science there are also different opinions on the legal nature of SPP agreements. For example, Kazakh researchers believe that in Kazakhstan an SPP agreement is not an institution of civil law, but a complex institution of business law, while considering an

[114] See Article 49.4 of the SPP Law of Kazakhstan.
[115] See Article 29 of the SPP Law of Uzbekistan.
[116] CIS Model PPP Law. Article 12.
[117] See for example: Comment to Federal Law No. 224-FZ 'On Public Private Partnership, Municipal Private Partnership in the Russian Federation and Amendments to Some Legal Acts of the Russian Federation', ed. V.F. Popondopulo and V.V. Kilinkarova. M.: Infotropic Media, 2016. P 59.
[118] Chikanayev S. (2021) Public–Private Partnerships in Kazakhstan: Evolution of the Government Policy and Reality of PPP Deployment. In: Koulouri A., Mouraviev N. (eds) Kazakhstan's Developmental Journey. Palgrave Macmillan, Singapore. P 172.
[119] See Article 3.2 of the Concessions Law of Russia.
[120] Chikanaev Sh.A. The concept and legal nature of a public-private partnership agreement in Kazakhstan civil law. Access mode: https://online.zakon.kz/Document/?doc_id=38606094&pos=43;-36#pos=43;-36

SPP agreement as one of the varieties of an investment business agreement[121]. My mind is the the opinion of many civil lawyers that not only complex branches of law, but also complex institutions do not exist objectively in the system of law, while only standing out in the system of law for scientific, pedagogical and practical purposes, is preferable. Therefore, I believe that an SPP agreement still has a private legal nature, while really being a kind of investment agreement[122].

4. Conclusion and Key Findings

The surprising thing is that a more accurate answer to the question 'what is a state-private partnership' is given not by the legal science of the developed countries of Europe or international practice, but by the legal science and positive law of the countries of Central Asia and Russia. In domestic positive law and legal doctrine, for a better understanding of the SPP phenomenon, the emphasis is correctly placed on the content rather than on the form of the phenomenon, i.e., on the essence of SPP as a certain type of joint investment activity, and not just a type of long-term government contract. SPP, accordingly, as a phenomenon is more of an economic concept, rather than a legal category, however, from the legal science perspective, SPP can be qualified as a complex legal institution of legislation, i.e., an institution of investment law. In other words, as I see it, the concepts of 'SPP' and 'SPP agreement' should be correlated in legal science in the same way, for example, as the concepts of 'property', which is an economic term, and 'property right', which is a category of civil law.

Given that there are many types of joint investment activities, to answer the question of what an SPP is, it is necessary to determine not only the definition of an SPP as a phenomenon and its legal nature, but also its qualifying features. In the international and domestic legal and economic literature, we can see largely coinciding, but not identical views on the exceptional features of an SPP[123]. The most complete and logical, however, and covering the features of local legal orders in the countries of Central Asia and Russia, is the following list of seven exceptional features of an SPP proposed by the developers of the CIS Model PPP Law:

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[121] M.K. Suleimenov Legal entities of public law: is there a need to enshrine this category in the legislation of Kazakhstan? Access mode: https://online.zakon.kz/Document/?doc_id=34484641&pos=62;-44#pos=62;-44
S.P. Moroz. State-private partnership agreement in the system of investment agreements. Civil law. Articles. Comments. Practice. Edition 55 (Edited by Holder of Habilitation Degree in Law, Professor A.G. Didenko). Almaty, 2018

[122] Since "an investment agreement is not an independent type of civil law contracts, but a collective concept." Popondopulo Vladimir Fedorovich, Investment Activity: Concept, Legal Forms of Implementation and Public Organisation // Pravovedeniye. 2017. No. 4 P 217.

[123] See for example:
E.R. Yescombe, Edward Farquharson. Public-Private Partnerships for Infrastructure (Second Edition), Butterworth-Heinemann, 2018, ISBN 9780081007662, https://doi.org/10.1016/B978-0-08-100766-2.00002-4. P 9.
Mouraviev, Nikolai & Kakabadse, Nada. (2017). Mouraviev, N. and Kakabadse, N. 2017. Public Private Partnerships: Policy and Governance Challenges Facing Kazakhstan and Russia. London: Palgrave Macmillan. P 4.
Borshchevsky G.A. State-private partnership: textbook and workshop for universities / G.A. Borschevsky. – M.: Yurayt Publishing House, 2018. P 16.
Kabashkin V.A. State-private partnership in the regions of the Russian Federation / V.A. Kabashkin.-M.: Delo Publishing house, RANEPA, 2016. P 10.
Afonin A.N., Tikhomirov A.F., Yaremenko A.I. State-Private Partnership in Healthcare: Textbook. St. Petersburg: SpecialLit, 2020. P 9.

1) "The SPP parties are public legal entities on the one hand and non-state business entities on the other.
2) The SPP objects are most often public infrastructure and are always in the area of public interest and control.
3) The SPP goal is to satisfy the public interest, to perform tasks that are a function of the state or local government, including the creation of infrastructure for the provision of public services.
4) The special role of the private partner, which involves the use of not only investments, but also the experience, management methods and technologies of the private partner.
5) Combining the resources of a private partner with the resources of a public partner for the implementation of an investment project on the terms of a balanced, fair and reasonable distribution of risks, costs and profits between the SPP parties.
6) Durability, long-term nature of obligations.
7) The legal form of an SPP project implementation is a long-term, mixed civil law contract."[124]

At the same time, this list of the SPP qualifying features, as well as the text of the CIS Model PPP Law needs to be improved taking into account the following comments:

1) First, I do not agree that an SPP agreement is not a mandatory basis for an SPP and that SPP projects can be implemented without concluding any contract. Based on international practice and the very essence of an SPP, the contract is the core, on which basis the entire system of relations arising within the framework of SPP is built.
2) The "SPP Purpose" as an SPP feature seems to me not entirely correct and needs to be clarified, since it is obvious that there is no common goal for the activities of the state and private business participating in the investment relations arising within the framework of SPP, i.e., a common goal of cooperation between the state and business. It is not logical to set the same goal for a businessman as for the state authority and expect from private business that its goal when entering into any relations with the state will be "satisfaction of the state interest". It is a generally accepted axiom in the economic literature that the sole objective of any businessman and commercial organisation is to maximize profits and provide maximum income for its owners[125]. Therefore, it should be clarified that the stated SPP goal is only applicable to a public partner.
3) It makes sense to clarify the SPP feature such as "durability, long-term nature of obligations", so that SPP can be applied to projects with an implementation period of five years or more, i.e., medium or long term, in order to avoid SPP 'imitations', when, for example, they sign SPP agreements for a period of three years, when the period of SPP object creation is two years and eleven months, and the private partner will not be responsible for operation in practice.

[124] Public-Private Partnership in Russia and Foreign Countries: Legal Aspects (ed. V.F. Popondopulo, N.A. Shevelyova) (Infotropic Media, 2015). P 35.
[125] Serdyuchenko O.P. Profit maximization as the main goal of the company // Priority scientific directions: from theory to practice. 2015. No. 16. URL: https://cyberleninka.ru/article/n/maksimizatsiya-pribyli-kak-osnovnaya-tsel-deyatelnosti-kompanii (accessed: 29/05/2022).

4) The current SPP feature «legal form of implementation of the PPP project» suggests that an SPP agreement is a long-term, mixed civil law contract. It should be clarified that this is a named mixed contract with special legal regulation. This clarification is practically significant because to qualify any investment agreement with the participation of a public legal entity as an SPP agreement, it is necessary that this agreement be concluded in the manner and under the conditions established by the relevant national SPP law or concessions law, if the SPP agreement, as in Kazakhstan, is a generic legal institution, divided into two sub-institutions (types of contracts): a "non-concession" SPP contract and a concession contract, which are regulated by special separate laws.

Given the above comments, the legal definition of SPP proposed in Article 2 of the CIS Model PPP Law shall be reworded as follows:

«public-private partnership is mutually beneficial cooperation between public and private partners legally registered for a certain *medium or long term*, based on the pooling of resources (cash and other property, professional and other knowledge, experience, skills and abilities) and the distribution of risks (including the risks of financing, construction, provision availability or demand in relation to the object of public-private partnership or related public services and related risks), and *which is implemented on the basis of a public-private partnership agreement concluded in accordance with this law*, in order to resolve the state, municipal and other socially significant tasks that are in the sphere of public interest and control *by the public partner*".

To properly qualify SPP agreements and distinguish them from related contractual forms, it is necessary that the national law of the relevant country define an SPP in a clear and unambiguous manner, as well as provide an exhaustive list of the exceptional SPP features in that jurisdiction. Such a list of exceptional SPP features enshrined at the legislative level will allow initially qualify any investment agreement with the participation of a public legal entity as an PPP agreement and, thereby, avoid the risk of recognising the transaction as sham and, as a result, the risk of reclassifying the SPP agreement through the court as a public procurement contract and applying to such an agreement the provisions of the law governing public procurement, or even invalidation of the concluded SPP agreement. Therefore, if the legal definitions of SPP in the national SPP legislations of the Central Asian countries and Russia are brought into line with the above legal definition of public-private partnership, the problem of "SPP imitations" due to a misunderstanding of the SPP phenomenon and incorrect qualification of SPP agreements in these countries would be likely resolved[126]. Besides, it makes sense to amend the current legal definition of "state partner" in Uzbek and Kyrgyz law in accordance with the concept of "public partner" proposed by UNCITRAL in order to unambiguously determine, in accordance with best international practice, that only public law entities can act in this role and exclude the possibility of «private-private partnership»[127]. In all Central Asian countries, it is also desirable to bring the

[126] In Russian law, it also makes sense to explicitly state that an SPP agreement is not an independent contractual structure, but a collective concept covering various forms of PPP, including concession agreements and SPP and MPP agreements.

[127] In addition, it is necessary to explicitly state in the codes of Uzbekistan and Kyrgyzstan that not only the state, but also administrative-territorial organisations, as well as the Republic of Karakalpakstan in the case of Uzbekistan, are

legal definition of "SPP object" into line with the concept of "public infrastructure" proposed by UNCITRAL, since at this stage of development of these countries, too broad legal definition of an SPP object as any property contributes to abuses in the area of SPP.

A correct understanding of SPP as a phenomenon is only possible in view of the international practice and is achievable using the comparative law method. In this case, law "is not only a phenomenon from the 'world of being', but at the same time, a certain aspiration to the 'world of due'."[128] Within the desire to enter this 'world of due', including for a better understanding and proper consolidation of the concepts of an SPP and an SPP agreement in the legislations of the countries of Central Asia and Russia, it is important continuing the study of the problematic issues posed in this article. In particular, it is essential to clearly understand the reasons that prompted France and Germany to choose public law as the path for the development of the SPP institution, as well as the advantages and disadvantages of implementing SPP agreements in the form of public-law agreements and administrative contracts. It is also necessary to keep studying the legal concept of 'relationship contract' in English law, for a better understanding of the SPP phenomenon, and, perhaps, even the reception of this category in the science and legislation of Russia and Central Asian countries in future.

subjects of civil law relations. Moreover, it makes sense in the budget codes of these countries to state exactly how these subjects of civil rights may assume state obligations under SPP projects.

[128] Pokrovsky I.A. The Main Problems of Civil Law. 7th ed., - Moscow: Statut, 2016. (Classics of Russian civil law). ISBN 978-5-8354-1261-7 (in trans.). P 64.

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