CONTRACTUAL FORMS OF PRIVATE LAW TOOLS IN PUBLIC ADMINISTRATION ACTIVITIES: ADMINISTRATIVE AND LEGAL ASPECT

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Annotation. In this article, based on an analysis of doctrinal research and the current legislation of Ukraine, an attempt has been made to define the legal nature and content of the category “contractual forms of private law instruments in public administration.”

The author identifies the following groups of such instruments: (a) public-private partnership (PPP) agreements (including concession agreements, joint activity agreements, property management agreements, and investment agreements within the framework of PPPs); (b) civil law contracts (such as purchase and sale agreements (alienation) of state and municipal property, lease agreements for state and municipal property, and leasing agreements); and (c) contracts in the field of public procurement (including contracts for the supply of goods, contracts for the performance of works, and contracts for the provision of services).

The analysis of current legislation and its practical application confirms that different types of contracts-public-private partnership agreements, civil law contracts, and public procurement agreements-are closely interrelated and are often used in combination with other forms of private law instruments to achieve the objectives of public administration. It should be emphasized once again that the list of contracts presented here is not exhaustive but rather serves as an illustration of the actual toolkit employed by public administration in private law relations.

On this basis, the author defines the contractual forms of private law instruments in public administration as legal means by which public administration entities participate in private law relations, aimed at achieving the public interest, implementing or facilitating the fulfillment of the tasks and functions of the state or territorial community, and expressed in the form of agreements between the parties concerning mandatory terms and other conditions mutually agreed upon at their discretion, through mechanisms such as public-private partnerships, public procurement, civil law agreements, and other arrangements.

Key words: administrative law, civil law contracts, contractual forms, legal regulation, private law instruments, public administration, public interest, public procurement, public-private partnership (PPP), state and municipal property management.

1. Introduction.

An analysis of the entire set of legislatively defined instruments of public administration demonstrates a rather extensive range designed to ensure the high functionality of the apparatus of the entire system of public authority. At the same time, under special legal regimes, geopolitical instability, and internal economic risks, the state is compelled to seek alternative effective mechanisms and to employ the broadest possible spectrum of managerial and legal tools aimed at ensuring proper functioning, fulfilling the core tasks of administration, and creating conditions for the realization of the administrative and legal status of its citizens. In such extraordinary circumstances, state institutions are required to maintain a balance between public interests and the observance of

constitutional rights and freedoms, resorting exclusively to legislatively established mechanisms and strictly adhering to their legally defined competences.

The development of administrative and legal relations, along with the adoption of positive foreign experience, has demonstrated that one such tool is the so-called private law instruments of public administration. Among these, the most widespread are contractual mechanisms of public administration's participation in private law relations, the primary purpose of which is the achievement of the public interest.

2. Analysis of scientific publications.

The instruments of public administration have been most systematically and fundamentally studied by I.V. Paterilo, who revealed their essence, main features, procedures for application, as well as developed proposals aimed at increasing their effectiveness [1].

The issue of using private law instruments in the sphere of public administration is closely related to the study of the institution of public-private partnership (hereinafter – PPP), which in recent years has become the focus of significant attention among Ukrainian scholars, primarily within the framework of administrative law science. In particular, the administrative and legal foundations for implementing PPPs in the management of real estate were explored in the dissertation by I.V. Dolenko [2], which substantiates the specifics of using civil-law instruments in the management of property assets. A comprehensive vision of the administrative and legal support for PPPs in the field of higher education was proposed by S.V. Bodnar [3], who analyzed the mechanisms of partnership between public and private higher education institutions.

The aspect of security policy in the context of public-private interaction was examined in the doctoral dissertation by Yu.V. Mekh [4], where special attention was given to the transformation of administrative influence instruments under conditions of heightened national security threats.

Concession activities (also within the framework of public-private partnerships) have been studied by I.S. Studenets, who attempted a comprehensive generalization of the legal regulation of the concession model of PPPs in Ukraine. The author presented a conceptual framework and peculiarities of concessions, traced their historical development, provided an overview of current legislation and the functioning of concessions in Ukraine, and conducted an in-depth analysis of certain topical issues. Particular attention was paid to examining concessions as a mechanism for post-war economic recovery in Ukraine [5, c. 2–5].

Despite certain attempts to analyze the contractual activities of public administration, the contractual form of private law instruments has not been the subject of a comprehensive study as an independent legal category and a distinct group of public administration instruments within the framework of administrative law science.

3. The purpose of the work.

To explore the legal nature and conceptual framework of the category «contractual forms of private law instruments in public administration».

4. Review and discussion.

Contractual mechanisms represent one of the most widespread forms of employing private law instruments in the activities of public administration, which provides grounds for developing a classification model encompassing the key types of such contracts and serving as a methodological basis for further research on this issue.

These instruments can be grouped as follows: (a) public-private partnership (PPP) agreements, including concession agreements, joint activity agreements, property management agreements, and investment agreements within the framework of PPPs; (b) civil law contracts, such as purchase and sale agreements (alienation) of state and communal property, lease agreements for state and communal property, and leasing agreements; and (c) contracts in the field of public procurement, including agreements for the purchase of goods, performance of works, and provision of services. Naturally, the list of contractual forms of public administration in private law relations proposed here is not exhaustive but is rather an illustrative attempt to describe, through selected agreements, this form of private law instruments in public administration and to highlight their key feature – the orientation towards achieving the public interest by ensuring the proper quality of public services, developing infrastructure, attracting investment, and effectively managing state and communal property.

Within PPPs, public administration does not act as a holder of authoritative powers but as an equal participant in civil law relations, entering into contracts under private law rules while adhering to restrictions aimed at safeguarding the public interest. This combination of private law and public law elements ensures a balance between the flexibility of contractual arrangements and the necessity of exercising control over the activities of private partners.

An important regulatory act defining the contractual forms of implementing public-private cooperation is the Law of Ukraine "On Public-Private Partnership" of July 1, 2010. Its provisions stipulate that within the framework of public-private partnerships, various types of agreements may be concluded, the key ones including concession agreements; property management agreements (provided they entail investment obligations on the part of the private partner); joint activity agreements; and other agreements consistent with the purposes and objectives of PPPs [6].

At the same time, the legislator permits the possibility of concluding mixed agreements within the framework of public-private partnerships (PPPs), i.e., contracts that combine elements of different types of agreements. The terms of such mixed agreements are determined in accordance with the general provisions of Ukraine's civil legislation, which once again underscores the private law nature of these instruments [6].

Relations concerning the initiation of PPPs, the selection of private partners, the preparation for contract conclusion, the determination of contractual terms, the signing and execution of agreements are, as a rule, governed by the provisions of the special Law on PPP. Unless another procedure is stipulated by legislation regulating the respective form of partnership, the PPP Law serves as the primary legal basis for regulating all procedural aspects of establishing and implementing partnership relations. It is particularly important to note that in cases where a mixed agreement is concluded within the framework of a PPP, the provisions of the aforementioned Law apply to all stages of contract preparation and implementation, including the procedure for selecting a private partner [6].

Each type of contractual arrangement within PPPs warrants separate consideration. Concession agreements represent a key contractual form for implementing public-private partnerships and are widely used by public administration to achieve strategically important objectives in managing state and municipal property. The regulatory basis for this type of agreement is the Law of Ukraine "On Concessions" of October 3, 2019, which comprehensively regulates the legal, economic, and organizational aspects of transferring assets for use by private partners. This Law provides a clear framework for the interaction between parties, including the preparation of concession projects, conducting competitive procedures to select a private partner, concluding and performing concession agreements, as well as mechanisms for monitoring and terminating cooperation. These provisions enable the state to attract investments and modern private sector technologies without relinquishing ownership of concession objects [7].

A concession agreement is a type of civil law contract concluded between the state (a public administration body) and a private partner for the management and/or operation of state or municipal property with the aim of providing public services or engaging in economic activities. The main elements of such an agreement include: the concession object (state or municipal property);

the parties (the concedent – the state or a local self-government body, and the concessionaire – the private partner); the duration of the agreement (determined depending on the object and conditions of operation); and the concession fee (which may be fixed, percentage-based, or combined) [7].

In the context of the issue under discussion, it should be emphasized that public administration acts as a party to the concession agreement and exercises supervisory functions over the fulfillment of its terms. At the same time, by transferring the object into concession, the state does not lose ownership of the property. It is obliged to provide legal guarantees for the concessionaire, including the stability of contractual terms, while retaining the right to conduct inspections, impose quality requirements for services, and ensure compliance with the public interest.

In turn, a property management agreement is a specific contractual form used by public administration within the framework of public-private partnerships to ensure the effective management of state or municipal property. The regulatory basis for this instrument lies in Chapter 70 of the Civil Code of Ukraine (Articles 1029–1045), as well as in special provisions of the Law of Ukraine "On Public-Private Partnership." This type of agreement allows public authorities to transfer property to a private partner for effective use and development, provided the latter assumes investment obligations.

A distinctive feature of this instrument is the combination of the dispositive nature of private law relations with strict requirements for public oversight and the targeted use of the property. In other words, the unique characteristic of a property management agreement lies in its integration of public and private law elements: on the one hand, the state or municipal entity retains ownership of the property and exercises control over the fulfillment of the private partner's obligations; on the other hand, the private party is granted broad powers regarding the operation, development, and modernization of property assets within the objectives defined in the agreement.

This type of agreement is particularly relevant in cases where public administration seeks not only to transfer property for management but also to attract private investment for its restoration or to enhance its efficiency of use. The conclusion of a property management agreement allows the state to avoid significant one-time budgetary expenditures while ensuring the proper functioning of strategically important assets.

Another instrument for implementing public-private partnerships (PPPs) is the joint activity agreement, the application of which enables public administration and private entities to cooperate effectively in achieving socially significant objectives. Its legal regulation is provided by Chapter 77 of the Civil Code of Ukraine "Joint Activity" (Articles 1130–1142). In particular, according to the Civil Code of Ukraine, under a joint activity agreement, the parties (participants) undertake to act jointly, without creating a legal entity, to achieve a specific goal that does not contradict the law. Joint activity may be carried out either on the basis of pooling participants' contributions (a simple partnership) or without such pooling of contributions [8].

The Civil Code of Ukraine stipulates that a joint activity agreement must be concluded in writing, and its terms—including coordination of joint actions by the participants or management of their common affairs, the legal status of property allocated for joint activity, allocation of expenses and losses among participants, their participation in the results of joint actions, and other conditions—are determined by agreement of the parties, unless otherwise provided by laws governing specific types of joint activity [8].

Within the context of PPPs, this contractual form gains particular significance as a means of combining the resources, expertise, and competencies of the public and private sectors. The Law of Ukraine "On Public-Private Partnership" broadens the scope for applying joint activity agreements by establishing procedures for their initiation, preparation, conclusion, and performance. According to its provisions, within the framework of PPPs, such agreements may be supplemented by investment obligations on the part of the private partner, which further enhances their practical effectiveness.

A key feature of a joint activity agreement lies in its ability to facilitate project implementation with the active participation of both parties, allowing them to co-finance, coordinate, and manage processes essential for advancing the public interest. This contractual model offers flexibility in addressing project-specific needs while minimizing undue interference by public authorities in the

commercial operations of private actors. At the same time, it is crucial to note that this contractual form requires strict adherence to transparent and legally compliant procedures for selecting private partners, as stipulated in the Law on Public-Private Partnerships. These procedural safeguards ensure accountability and transparency across all stages of the partnership. In this sense, a joint activity agreement represents a versatile private-law instrument in the toolkit of public administration, enabling the delivery of public interest outcomes without the necessity of creating new institutional or legal entities, while empowering private partners to contribute actively to public service provision and the management of state and municipal affairs.

By contrast, investment agreements serve as a legal mechanism for mobilizing private capital for public projects of strategic relevance to the state or local communities. Although Ukrainian law does not provide an explicit definition of "investment agreements," relationships between stakeholders in investment activities are governed by the general provisions of the Civil Code of Ukraine and the Law of Ukraine of September 18, 1991 "On Investment Activity" [9], notably Article 9, which recognizes contractual arrangements as the primary instrument for regulating interactions among participants in investment processes.

Under this legal framework, investment activities may take place through:

- public investment, undertaken by state authorities and financed via public budgets, external borrowing, or through state-owned enterprises and institutions using their own or borrowed funds;
- local investment, carried out by municipal authorities and funded through local budgets, external loans, or by municipal enterprises and institutions leveraging their own resources;
- state aid, provided in the form of financial or regulatory support for the implementation of investment projects;
- co-investment, involving joint contributions from domestic and foreign legal entities and individuals [9].

A distinctive feature of investment agreements is their ability to integrate various legal constructs: they may be concluded as standalone contracts or as components of mixed agreements (for example, within concession agreements or joint activity agreements). As reflected in Articles 12 and 12-1 of the Law of Ukraine "On Investment Activity," the state's role extends beyond mere participation in contractual relations to encompass state regulation of investment activities. This regulation includes, inter alia, the provision of financial assistance (grants, subsidies, subventions), co-financing of projects, issuance of state guarantees, and other forms of support [9]. Similarly, in the sphere of public-private partnerships (PPPs), legislation provides for the possibility of state support for the implementation of investment agreements in various forms, ranging from financing and guarantees to measures involving the construction of ancillary infrastructure. This underscores the fact that investment agreements within PPPs are inextricably linked with other public administration instruments, particularly financial and property mechanisms that provide the resource basis for the state's participation in private law relations.

Thus, contracts concluded within the framework of PPPs constitute a coherent group of private law instruments in public administration, enabling state and local authorities to implement strategically significant projects in cooperation with private actors. Concession agreements, property management agreements, joint activity agreements, and investment agreements-by combining elements of civil and administrative law-demonstrate significant potential for advancing the public interest.

At the same time, beyond the scope of public-private partnerships (PPPs), public administration widely employs other forms of civil law contracts. Unlike PPP agreements, these contracts regulate relationships that do not involve the joint exercise of public functions or the implementation of long-term partnership projects. Instead, they serve as important tools for ensuring the effective management of state and municipal property, fulfilling budgetary obligations, and addressing the routine administrative and economic needs of public authorities.

Purchase and sale agreements, including agreements on the alienation of state and municipal property, are among the most common civil law instruments used by public administration. This contractual form enables the realization of ownership rights over state and municipal assets, allowing public authorities to manage property resources effectively within the powers defined by law.

The legal basis for such agreements is found in the provisions of the Civil Code of Ukraine (Chapter 54 "Sale and Purchase") and in special laws, including: the Law of Ukraine of January 18, 2018 "On the Privatization of State and Municipal Property" [10], the Law of Ukraine of October 3, 2019 "On the Lease of State and Municipal Property" [11] (concerning procedures for alienation of assets following the expiration of lease terms), as well as other regulatory acts.

Such agreements are concluded by public administration entities for the alienation of property that is no longer used to meet public needs or has been included in the list of assets subject to privatization. A distinctive feature of using purchase and sale agreements as private law instruments in public administration lies in their combination of the principles of equality of the parties and the dispositive nature of civil legislation with the requirements of special public law regulation, which limits the discretion of public authorities in exercising property rights.

This underscores the dual nature of such agreements-as instruments enabling the state's participation in private law relations and, at the same time, as mechanisms for advancing the public interest in the management of state and municipal property.

In addition to property alienation, public administration actively employs another type of civil law agreement-lease agreements for state and municipal property. These contracts enable the temporary transfer of state or municipal assets for use by individuals or legal entities on a paid basis, while ensuring that ownership remains with the state or territorial community.

The regulatory framework governing lease relations is provided by the Law of Ukraine "On the Lease of State and Municipal Property" [11]. This law defines the legal, economic, and organizational principles of transferring property for lease, regulates the procedure for concluding agreements, and establishes additional safeguards for transparency and the efficient use of public property.

The content of a lease agreement necessarily includes: a precise definition of the leased object (description of the property); the lease term (generally not less than five years, unless otherwise provided by law); the amount and procedure for paying the lease fee (Article 17 of the Law); conditions for the use of the property; and the lessee's obligations regarding maintenance and compliance with insurance requirements (Article 26).

As with purchase and sale agreements, lease agreements combine private and public law elements. On the one hand, they are based on the principles of freedom of contract and equality of the parties; on the other hand, they are subject to strict rules and restrictions designed to safeguard the public interest and ensure the effective management of state and municipal property.

Leasing agreements (financial leases) also constitute an important tool for public administration, as they are aimed at ensuring the proper functioning of state and local government bodies. According to Article 806 of the Civil Code of Ukraine, under a leasing agreement one party (the lessor) transfers or undertakes to transfer to the other party (the lessee) for possession and use, for a specified period and for an agreed fee (lease payments), property that is either owned by the lessor and acquired without prior arrangement with the lessee (direct lease), or property specifically purchased by the lessor from a seller (supplier) in accordance with the specifications and conditions set by the lessee (indirect lease) [8].

The distinctive feature of leasing agreements as private law instruments in public administration lies in their capacity to enable public bodies to use assets without the immediate allocation of significant budgetary funds for their acquisition. This is particularly relevant in sectors requiring the renewal of infrastructure or technical equipment. At the same time, the application of leasing mechanisms is constrained by public financial control regulations and is subject to the general principles of legality and the efficient use of budgetary resources.

In turn, public procurement (the acquisition by contracting authorities of goods, works, and services in accordance with the procedure established by the Law on Public Procurement) constitutes an essential instrument of public administration, employed to meet the material, technical, and other needs of the state, territorial communities, and their associations. According to paragraph 6 of part 1 of Article 1 of the Law of Ukraine "On Public Procurement," a procurement contract is defined as a commercial contract concluded between a contracting authority and a supplier (contractor) based on the results of a procurement or simplified procurement procedure, providing for the delivery of goods, performance of works, or provision of services for consideration and within the timeframes specified in such a contract [12].

As previously noted, the primary types of contracts concluded as a result of public procurement procedures include contracts for the supply of goods, contracts for the performance of works, and contracts for the provision of services. Their analysis allows us to identify the specific features of contractual private law instruments in the activities of public administration in this field and to understand the particularities of the legal regulation of relations arising in the conclusion and execution of such contracts. Accordingly, these types of contracts will be considered in sequence, with a focus on the procedures for their conclusion, essential terms, and their features as private law instruments in public administration.

Contracts for the supply of goods are concluded to meet the material and technical needs of state authorities, municipal enterprises, and institutions. The law requires that, prior to the conclusion of such contracts, a specified procurement procedure be conducted: open bidding, competitive dialogue, negotiated procedure, or simplified procurement (Articles 13, 14, 40). The essential terms of a supply contract are aligned with the requirements of civil legislation and include: the subject matter of the contract (the goods and their specifications); the price (determined in accordance with the winning tender proposal); delivery timelines and procedures; and payment terms (Article 41) [12].

Given the specific nature of these contracts, a key feature is the prohibition on amending essential terms after signing, except in cases provided for in part 5 of Article 41. Such exceptions include: reducing the volume of procurement or increasing the unit price of goods (up to 10%) in the event of market price fluctuations, with limitations on the frequency of such changes (excluding fuel, gas, and electricity); improving the quality of the procured goods without increasing the total contract value; extending the contract term and fulfilling obligations in cases of force majeure or delayed financing, provided that the contract value is not increased; reducing the price by mutual agreement without altering the quantity or quality; adjusting the price due to changes in tax rates, fees, taxation conditions, the consumer price index, exchange rates, or stock quotations, if stipulated in the contract; and extending the contract's validity at the beginning of a new fiscal year within 20% of the previous contract value to allow for the completion of procurement procedures [12].

Recently, in response to challenges arising from the large-scale invasion, the legislator clarified that during the legal regime of martial law in Ukraine or in specific territories, essential terms of procurement contracts may be amended (after signing but before the parties fully perform their obligations) by contracting authorities defined in the Law of Ukraine "On Defense Procurement." Such changes may concern the volume of procurement, contract value, contract duration, and fulfillment of obligations for the delivery of goods, performance of works, or provision of services [12].

In turn, contracts for the performance of works are a widely used instrument of public administration, applied to carry out tasks in the fields of construction, reconstruction, capital repairs, technical re-equipment, and other economic works that directly impact the development of state and municipal infrastructure. These contracts are employed to ensure the proper condition of housing and utility facilities, transport, energy, and social infrastructure, as well as to implement national and local development programs. The essential terms of a contract for the performance of works include: a clearly defined scope of work and deadlines for its completion; financing arrangements, including the possibility of monthly or staged payments depending on the progress of the work; guarantees of the quality of the completed work, including the contractor's liability for latent defects and warranty periods; and conditions for the acceptance of work and the procedure for preparing the relevant documentation.

Similarly, contracts for the provision of services are one of the key forms of private law instruments used by public administration to fulfill its functions across a wide variety of areas, ranging from transport services, information and consulting services, to the security of facilities, energy servicing, and maintenance of infrastructure systems. These contracts are concluded to meet the needs of state authorities, local self-government bodies, enterprises, institutions, and organizations, with the aim of supporting their day-to-day operations and ensuring the proper fulfillment of state or community functions. The essential terms of contracts for the provision of services include: the scope and list of services to be provided (with indicators of quality and timelines for delivery); the duration of service provision, including schedules or staged implementation if specified in the contract; the cost of services and payment procedures, including the possibility of interim or advance payments depending on the nature of the services; quality requirements for the services, mechanisms for monitoring their performance, and the service provider's liability for any breach of contractual obligations.

As with other types of contracts within the framework of public procurement, service contracts are subject to special public law provisions, which impose strict oversight of procurement procedures and ensure transparency and efficiency in the use of budgetary funds.

5. Conclusions.

In summary, it should be noted that the comprehensive analysis of the contractual forms of private law instruments in the activity of public administration has made it possible to systematize their types and identify the main patterns of their application. As already indicated in the first section, such contracts involve the conclusion by public authorities of civil law agreements with private entities on equal terms in order to achieve the public interest. Contractual mechanisms constitute the basis for the implementation of private law instruments of public administration, ensuring the equal participation of the state in contractual relations with private counterparties and creating prerequisites for mutually beneficial cooperation within the framework of achieving the objectives of public administration.

The analysis of current legislation and the practice of its application has confirmed that various types of contracts (public-private partnership agreements, civil law contracts, contracts in the field of public procurement) are closely interrelated and are often used in combination with other forms of private law instruments to achieve the goals of public administration. It should once again be emphasized that the list of contracts outlined herein is not exhaustive but serves as an illustration of the actual toolkit of public administration in private law relations.

In view of the above, it appears appropriate to define the contractual forms of private law instruments in the activity of public administration as legal means of participation of public administration entities in private law relations, aimed at achieving the public interest, implementing or facilitating the performance of the tasks and functions of the state or territorial community, expressed in the form of agreements between the parties regarding mandatory terms as well as other terms agreed upon at their discretion, through mechanisms such as public-private partnerships, public procurement, civil law contracts, etc.

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