

Public – Private Partnership (PPP) and Cultural Sponsorship Law and Deontology

Antonios Maniatis

Technological Educational Institute of Ionian Islands, Greece

maniatis@dikaio.gr

Ioannis Meleas

Technological Educational Institute of Ionian Islands, Greece

imeleas@pspa.uoa.gr

Abstract

Public-Private Partnership (PPP) is a modern variation of concession, it exemplifies the prevailed School of Thought, New Public Management, but it may cause various deontological problems. It could be promoted through another autonomous type of contract, sponsorship. This practice has been described as “*an investment in cash or in kind activity, in return for access to the exploitable commercial potential associated with that activity*”. The recommendable osmosis between the two types of contracts may be proved to be beneficial even for the cultural domain, despite its non-reciprocal nature, and is connected with the Corporate Social Responsibility tendency of both private companies and public ones.

Keywords

Public - Private Partnership (PPP), New Public Management (NPM), Cultural sponsorship, Contracting out, Business Deontology, Law, Ethics, Corporate Social Responsibility

1. Introduction: Funding mechanisms for public projects

The state is in need of resources to accomplish its mission, so it has tested both obligatory ways and optional ones of fundraising (Nikolopoulou and Maniatis, 2013). Obligatory ways consist mainly in imposing taxes and levy of money but the so-called “Conservative Revolution”, inaugurated by Thatcher in 1979 and by Reagan in 1980 in the United Kingdom and in the USA respectively, had other priorities. This neoliberal recipe for public economy *inter alia* puts the stress on privatization of public companies as well as on reduction of income taxes and public fees (Cañagual, 2011). In this context, New Public Management is a contemporary theoretical approach to the way of change of Public Administration. It started in the United Kingdom, expanded initially in the United States of America and in Australia and then in Scandinavia and elsewhere in Western Europe. It refers to the tendency of adopting the principles and values of the private sector in order to meet financial objectives and goals (Kalogirou and Maniatis, 2012). This osmosis between the mission of the state and the business philosophy of the private sector may cause various deontological problems.

Another way of fundraising, in ancient times obligatory and afterwards merely optional, is sponsorship.

The state has diachronically made use of the concession of technical works and services to the private sector, let alone the fact that the similar mechanism of Public - Private Partnership (PPP) has recently constituted a worldwide trend (Patrikios, 2009).

On account of this methodology of private-centered optional fundraising for public activities, *we suppose that PPP needs modernization and promotion through the sponsorship mechanism, exemplified by the cultural sponsorship contracts.*

The approach of the current study focuses on rules either of formal nature or of informal one, having to do with both the current legislation and ethics, particularly the business deontology.

2. New Public Management, Business Deontology and PPP

Governance is the administration of public affairs conducted by a central directing institution, the government. There is no uniform model of governance, particularly on account of the fact that the movement of New Public Management seems rather apprehensive as for the reformative methodology to adopt. The principal movements of this preeminent School of Thought are the currents of the market economy and of participation and reinforcement (Maniatis, 2006).

The first current, which prevailed in the United Kingdom and in Australia, has caused decentralization through the creation of specialized services. These services function on the basis of productivity targets under the direction of managers frequently coming from the private sector. Furthermore, certain systems of attachment, going from the reciprocation to the productivity of public servants have been institutionalized. As far as possible, administrative processes are replaced by market mechanisms.

A considerable alternative, more popular in Northern America and in certain states of Europe, is less related to the market economy, to which it is in opposition as long as it turns down the universal primary role of markets mechanisms for the delivery of services. On the one hand, it encourages the active participation and the contribution of the working population to the bureaucratic processes and, on the other hand, it puts the stress on active participation and on the reinforcement of the citizen in his relations with the executive power. This deontological body of rules recommends the reduction in the number of levels of hierarchy in the interior of services, the elimination of certain intermediary echelons of administration and the systematic encouragement of initiatives of the lower grade public servants. Besides, it implicates the creation of institutions specialized in the aid of public services users and of citizens in total, gives advice to the public and familiarizes it with the aims and the procedures of various services. In the United States, the reinforcement of the lowest echelons of bureaucracy has been realized since the beginning of the 21th century (Spanou, 2001).

Anyway, severe criticism has been raised against New Public Management for various reasons. For instance, as for the market economy, the use of methods and technologies by the public servants, whose the attention was diverted from the rules and the processes towards the results and the performance should not be disconnected from values that the creation of these rules aimed at safeguarding. The technological and economic automation of the state should not be duplicated in the form of normative autonomy as for the social needs and the rights of public services users. It is a question of deontology, let alone in a political system ruled by the relevant constitutional principle of ‘‘rule of law’’.

The participation and reinforcement model should not imitate the anachronistic cases of socialization of the management of the public enterprises on account of the fact that the employees’ approach is usually far away from the one of private individuals.

In conclusion, the model of ‘‘Citizen – Client’’ of public services, particularly of public enterprises, is in principle recommendable, so a kind of combination of the two currents of New Public Management emerges. Deontology implies respect for human being and business responsibility against society as well as against natural and cultural environment (Maniatis, 2013).

As for PPP contracts innovation, it is about a variation of concession contracts mainly for non-reciprocal constructions and services. This mid-term or long-term form of cooperation

between the state or another public entity and a private company, having the legal form of a “Special Purpose Company” or “Special Purpose Vehicle”, is connected with the Conservative Revolution, particularly in the United Kingdom. It exemplifies the tendency of contracting out for state activities and constitutes, along with the concession model, the ‘alternative contracting out’ against the traditional contracting out (for instance, contracts of public constructions). In this sense, it corresponds to one of the major dimensions of New Public Management and, according to some experts, even to its essence (Lane, 2000). Contracting out has become, since the beginning of the 1980s, a part of the big program of the New Public Management. More concretely, in the first phase of this School of Thought, the priority consisted in privatising public activities whilst since the second part of the 1990s contracting out has been the preferable solution for various reasons.

3. Cultural Sponsorship History

Definitions of sponsorship, like the ones of PPP, vary and the practice has been described as “*an investment in cash or in kind activity, in return for access to the exploitable commercial potential associated with that activity*” (Fabien, 2010).

Cultural sponsorship in its current form appeared initially in 50’s in the United States. Companies, mainly the big enterprises in the tobacco market, began to accomplish the mission of sponsors as they faced serious problems of media exclusion in the sector of advertisement, because of the antismoking legislation. Due to this legal problem, they decided to enhance their image, *inter alia* by sponsoring the arts production. It is about a very interesting case of formal prohibition that led to a new form of deontology, the corporate responsibility. Of course, it was not merely a question of a best practice in terms of managerial deontology but mainly a very most suitable communication means to achieve commercial targets. Therefore, in 1968 the Business Committee For the Arts was created, to contribute to the renaissance of culture of the United States through the financial back of companies.

This crucial development, coming from legal – type obstacles of the economy of the market, had a wider impact, on international scale. Indeed, in Europe cultural sponsorship appeared in early 70’s, as the entrepreneurial world and the artistic community of the United Kingdom adopted this movement. In 1976, Association for Business Sponsorship of the Arts (ABSA) was created, by companies with the help of the British government. However, the great development of this mechanism took place in 80’s. The “Conservative Revolution” focused on the limitation of the state and the reduction in state fees. As a result, this neoliberal policy consisted, in cultural affairs, in the limitation of the state interventionism while the reduction of subvention had already begun some years ago, let alone it was one of the reasons of success of the introduction of sponsorship.

The British model of sponsorship had a wide impact on the entire continent of Europe, particularly in countries under neoliberal governance, as the concept of business sponsorship is connected with the market economy. Nevertheless, many countries keep taking a rather suspicious deontological approach to this concept, as a means of advertisement for the companies involved.

4. Cultural Sponsorship Law

In the Greek legal order, although the Constitution makes no explicit reference to sponsorship, L. 3525/2007 regulates this autochthonous “function” according to the ancient Greek term meaning a financial duty imposed by the state, of financing cultural activities. It is

to pay special attention to the fact that several countries have recently adopted a law relevant to these contracts, just like they did almost simultaneously for PPP contracts. This is the case of Greece that in the aforementioned law defines cultural sponsorship as a pecuniary or non-pecuniary economic benefit consisting in kind, immaterial goods or services, for the enhancement of concrete cultural activities or purposes of the recipient (Maniatis and Kapralou, 2012).

Sponsors' motive is to strengthen their corporate image through the identity of social responsibility. Besides, they may also take a profit from the consequent tax exemption that is in use in most countries of the European Union and of North America and allows to big carriers of cultural goods and activities to back up their mission just as their own sponsors are facilitated to accomplish their commercial mission in a competitive way, so in conformity with the New Public Management current of market economy.

The underlying motivation of cultural sponsorship combines the two opposite poles: interests, on the one hand, and ideals (deontology), on the other hand. The tough interests for a sponsorship are often colored by softer reasons, such as personal fondness, attachment to and familiarity with culture on behalf of people in business. Some of these intentions are benign and legitimate, others not so spotless. One reason for mapping and analyzing types and motivation of private involvement in culture is that this practice helps make successful policies vis-à-vis private partnership.

Anyway, in the Greek legal order sponsors are defined as physical or legal persons, regulated by private law, proceeding to cultural sponsorship. Sponsorship has been institutionalized as a formal contract, namely in form of private contract document, producing mutual obligations for the parties. Indeed, the sponsor is supposed to offer money, services, materials or immaterial goods to the recipient in order to back up a concrete cultural purpose or activity while the recipient is supposed to notify publicly the sponsor's offer. Anyway, the sponsor acquires no right to interfere into the form or the content of the activity on the matter, in virtue of the principle of the independence of the other party. Thanks to this incompatibility, the recipient is exclusively responsible for his policy, like the public partner that is the master of the PPP project from scratch.

L. 3525/2007 classifies sponsors in the following categories, on the basis of financial criteria: a. Great Sponsor, b. Sponsor, c. Supporter, d. Friend. No classification of deontological approach has been consecrated...

5. The question of correlation of cultural sponsorship with PPP

Literature on PPPs sometimes makes use of the term "sponsored PPP" against "administrative PPP" but in a sense quite different from the legal sense of sponsorship. In this context, sponsored PPP declares the PPP case, in which the cost of providing the service is jointly borne by the users of the services and the government through a capital subsidy, not wholly borne by the Public Administration (administrative PPP). On the contrary, the question of correlation between sponsorship, in the proper use of the term, and PPP is not only legally unregulated but also almost fully original in the level of scientific survey. Indeed, just a recent research has proposed this idea on account of the French successful paradigm of cultural sponsorship (Vassilakou and Maniatis, 2012). Cultural sponsorships in France have been particularly successful, consisting even in rewards for information to the authorities investigating crimes related to heritage and artistic treasures. However, this approach may be enriched by the datum that the French system of funding culture consists in a strong public intervention, reinforced by the tax-policy, and in a relatively mediocre sponsorship. So, it

appears to be strictly the opposite to the system of the United States, in which funding is based on a variety of private initiatives.

In other words, business deontology in the United States has traditionally included the financial back of cultural scopes by private companies. This crucial remark for capitalism has been already exemplified by the cultural sponsorship initiative against anti-smoking prohibitions.

The aforementioned research considered, in this context, the correlation, in law as well as in practice, of sponsorship contracts to the PPP ones as highly recommendable. So, it concluded that national PPP legislations, such as the French law and the Greek one, could include a detailed reference to sponsorship or the interested states could adopt a single law including PPP contracts and sponsorship ones.

The proposal of that research is reinforced by a historical argument related to public infrastructure and to cultural goods. Indeed, both contractual types are not only new in the legislative level but also comparable within the following scheme of the history of management of the public infrastructure and the cultural goods (particularly heritage), from 18th century on, mainly in France:

Table 1: Phases of public infrastructure and cultural heritage management (18th c.– 21st c.)

<i>PHASE OF THE PERIOD 18th C. - 21st C.</i>	<i>PUBLIC INFRASTRUCTURE MANAGEMENT (PROGRESS TO OPERATIONAL PRIVATIZATION)</i>	<i>(PUBLIC) CULTURAL HERITAGE AND ARTS MANAGEMENT (CREATION AND GROWTH OF THE MUSEUMS BRANCH OF THE PUBLIC SECTOR)</i>
1	<i>STATE MONOPOLIES</i>	<i>ROYAL COLLECTIONS & BUILDINGS (PALACES)</i>
2	<i>CONCESSIONS</i>	<i>CULTURAL HERITAGE AND ARTS PUBLIC MUSEUMS ENDOWED WITH FORMER ROYAL COLLECTIONS AND BUILDINGS (PALACES)</i>
3	<i>CONCESSIONS AND THEIR NEW VARIATION: PPP CONTRACTS</i>	<i>CULTURAL SPONSORSHIP CONTRACTS AND CONCESSION CONTRACTS AND PPP CONTRACTS FOR CULTURAL ACTIVITIES AND MUSEUMS</i>

Anyway, correlation of sponsorship and PPP is also supported by the argument of their joint potential spiritual character. Sponsorship may be proved to be quite beneficial for PPP contracts, even in the PPP pre-contract procedure, consisting in the conception of the idea, and of course of its deontological background, and in the preliminary assessment of the PPP scope. In other words, sponsors could back up the crucial preliminary stage, mainly by non-pecuniary sponsorship.

6. Conclusion: A deontological approach to the potential correlation of PPP and sponsorship

Sponsorship in general, as exemplified by the cultural sponsorship version, is not incompatible with the comparable innovation of the PPP model, which may be promoted through it. On the contrary, in principle it is worth correlating in rules, both of law and of deontology, as well as in practice these two modern types of financing the state scopes, particularly in the sensitive domain of culture. If contracting-out is the principal methodology for public constructions and services, it may be backed up by supporting contracts, such as donations and sponsorships. As a result, a legal and managerial approach to this operational whole consisting in a double synergy (PPP and its catalyst in form of a funding “partnership”) is recommendable. Last but not least, non-reciprocal scopes of public policy are intrinsically related to social fundamental rights, such as hospitals, schools, museums and libraries, and fit in with the deontological model of Corporate Social Responsibility of both private companies and public ones, so PPPs are related to sponsorship respectively.

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