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Public-private Partnership in the Republic of Turkey: The History of Formation and Peculiarities of Legal Regulation

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Abstract. The article analyzes public-private partnership as a legal institution of the Republic of Turkey. The authors examine the process of formation and development of this institution in the context of the global trend of its popularization as an instrument of economic policy. At the same time, it is emphasized that if in the era of the Ottoman Empire, public-private partnership was used as a way to pressure European countries on a weakening Port, then at the end of the last century this institution became widespread in the country as a mechanism for implementing neoliberal economic policy. The paper analyzes the current legislation regulating public-private partnership. The authors state the absence of a single normative legal act, as well as analyze the reasons for the current situation. The essence of each law is revealed in an inextricable connection with various models of public-private partnership. Special attention is paid to the peculiarities of the legal status of public-private partnership in Turkey. It is assumed that such a feature can be considered the active support of the state in the financing of the most significant projects. The paper emphasizes the focus of the country's authorities on attracting foreign investment through public-private partnership. As the important feature the authors consider the broad powers of municipal authorities in the field of attracting business to the implementation of infrastructure projects. It is emphasized that this circumstance should not escape the attention of Russian researchers, since the participation of Russian commercial organizations in projects implemented by municipal authorities opens up new opportunities in strengthening the influence and positions of domestic business in this country. The article analyzes the ideologization of Turkey's approach to the analysis of public-private partnership on the part of the academic community.

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Introduction

Public-private partnership (hereinafter — PPP) is a legal institution with a relatively long and interesting history of its formation. As you know, a certain prototype of modern PPP originated a long time ago — at the end of the XVII century, in post-revolutionary England, when the king invited owners and managers of nascent credit institutions to participate in projects for the construction of roads connecting the rapidly growing cities of the island state [1. С. 197]. However, for a long time this legal institution remained in the background among other instruments of economic policy, and many experts did not pay due attention to it, not seeing any special prospects in it. The most prominent theorists of Keynesianism and its currents proposed to clearly and unambiguously differentiate two sectors of the economy — commercial and state. Although the public sector complemented the commercial sector, it did not interact with it in any way in the provision of infrastructure services. At the same time, it was believed that the state was able to independently cope with the challenges of the market economy, it was enough only to competently form aggregate demand using various mechanisms of influence offered by the most prominent economists of that time [2. P. 5].

However, already in the 1970s it became clear that the Keynesian model of economic policy was failing. It became increasingly difficult not to cross that invisible line, after which the active intervention of the state in the economy begins to cause more serious problems for the entire national economy system. At the same time, the state had fewer and fewer funds to cover the increasing social costs. Economists and right-wing politicians have once again started talking about the need for privatization. However, there were significant difficulties here too — it turned out that the business did not want to deal with expensive infrastructure projects. In these conditions, PPP gets a completely new sound. In this context, perhaps, the program of the Prime Minister of Great Britain, leader of the Conservative Party John Major “Private Finance Initiative”, published in 1992, became a kind of methodological platform. The program stated the need to develop various forms of interaction between the public and private sectors of the economy, including the PPP format.

In the Republic of Turkey, the formation of the legal institution we are considering took place in approximately the same direction and within the same

socio-economic paradigm, however, demonstrating a number of features, which will be discussed below.

In recent years, cooperation between the Russian Federation and the Republic of Turkey has reached a new and better level. Recent statistics show an unprecedented growth in trade between the two countries. At the same time, domestic exports to this country are growing at a high rate. According to the authoritative Russian news agency RT, based on data from the Turkish Institute of Statistics, by the end of 2022: “Russia was the leading supplier to Turkey, which accounted for almost 15 % of the country’s total imports” [3]. It is noteworthy that within the framework of Russian-Turkish cooperation, one of the areas of interstate cooperation is public-private partnership [4]. It seems that the active development of the Turkish market by Russian business is extremely important in the face of unprecedented external pressure, given the fact that opportunities for cooperation with leading Western economies are significantly limited.

In the current situation, the process of Russian companies entering the Turkish market in the PPP format may mark the beginning of a new, better stage in the development of interstate cooperation. As we see it, the Turkish economy will be more interesting for Russian business when it has a clear understanding of what methods can be used to achieve its goals in this country with maximum efficiency. In this context, PPP has a great chance of becoming such a tool. Moreover, as will be discussed below, the Turkish government has developed and proposed specific measures to attract foreign capital to specific sectors of the economy, among which PPP occupies one of the key positions.

Materials and methods

During this study, we used methods of cognition, both at the general theoretical level and in a specialized orientation. In our opinion, the first group of methods should include such as deduction and abstraction. The active use of the deductive approach is since the authors took as a starting point that at the present stage PPP is an important factor in the development of the national and global economy. First of all, this is manifested in the construction of complex and costly infrastructure projects in the field of transport, energy, healthcare and education. Based on this provision, we have taken a hotel fragment of this new global reality — the mechanism of PPP implementation in the Republic of Turkey, including its legal regulation. Special attention was paid to the opportunities that open for Russian businesses in the fast-growing Turkish market. The abstraction method was applied by us to solve the same problem — to identify those areas that, as we see it, form trends or main directions in the field of international cooperation. As it will be said below, the state stimulation of PPP largely determines the specifics of cooperation between business and public authorities in Turkey.

Of the methods that can be conditionally called narrow-profile, we highlight the method of legal modeling, which is widely used in investment law. In this work, several models of legal relations were revised in the context of the active implementation of PPP. At the same time, we considered the peculiarities of Turkey's national legislation and current economic policy, given the fact that their understanding can significantly simplify the promotion of Russian business interests in this country. Among the purely scientific and economic methods of cognition, it is worth noting the method of system analysis, with the help of which the spheres of active PPP implementation were identified.

Public-private partnership in Turkey has not been studied by Russian specialists to date, which is why we have not identified scientific papers in which Turkish PPP would occupy a central place. Considering the fact that the Institute of public-private partnership is the object of interdisciplinary research, we have also studied works on the economy and law of the Republic of Turkey, which are at least indirectly related to this problem. From the entire array of monographic studies, I would like to highlight the works of N.R. Masumova [5], R.N. Shangaraev [6] and N.Yu. Ulchenko [7]. In the course of this study, we used the results set out in the articles by K.A. Gumbatov [8], S.V. Pospelov [9], B.D. Nuriev [10]. It was also impossible to ignore the dissertations of N.R. Allakhverdiyev [11] and I.V. Okhrimenko [12].

Nevertheless, the main source of information was foreign scientific literature, primarily the research of Turkish scientists. For example, the history of the formation of PPP is extremely thoroughly described in the publication of Istanbul researchers S. Teker and D. Teker, considering the trends and ideological transformations that took place in the modern history of this country [13]. The relevance of the legal institution we are considering in the conditions of the modern economy is revealed in the works of A. Jinavoglu [14], N. Chynar, C. Turkoglu and A. Tyutyunsatar [15]. As for statistical data, in this article we used indicators published on the portals of public authorities, primarily the Ministry of Economic Development of the Republic of Turkey, as well as in the work of X. Yurdakula and R. Kamasaka [16].

National regulatory legal acts regulating PPP are also of great importance. In this context, strategic planning documents served as an extremely important source for understanding the process of PPP formation in Turkey [17]. It should also be noted that since the proclamation of the republican system in 1923, the governments of the country have approved eleven plans for the socio-economic development.

It should be added that an analysis of the scientific literature on the economic structure of the current Turkish Republic has demonstrated one important circumstance. Even though the economy of this country has long been the object of research by Russian specialists, one significant fact escapes attention — at its core, the national economy system of this country is purely statist. This circumstance is explained by numerous factors, among which the Kemalist approach to the state as a key player in the country's economy, which has survived to the present time,

is of particular importance. The Turkish Constitution demonstrates an extremely respectful attitude towards the etatist legal tradition. For example, Article 47 of the Basic law states that “private business, potentially capable of performing social functions, can be nationalized if necessary” [17. P. 4]. It is noteworthy that in the modern Russian legal paradigm there is not only a similar approach to the problem of nationalization, but even any legal categories that are close in meaning. In Russia, the legal status of nationalization is formalized in the Civil Code (Part 2, Article 235), and then not as an independent, objectively established legal institution, but as an instrument for the termination of property rights. As can be seen, in the Turkish legal tradition, issues of state regulation occupy an important place, which is primarily due to historical reasons.

Results

It would be more logical to present the results of our research in the following format. Firstly, it seems that it is impossible to ignore the process of formation and development of PPP in Turkey, given the fact that this legal institution has developed in this country not only in line with the global trend, but also demonstrated its national characteristics. Secondly, we will analyze the regulatory support of PPP in Turkey at the present time. At the same time, attention will be focused on the specifics of the legislative process. Thirdly, this paper will outline the main PPP models used in the Republic of Turkey, as well as identify regulatory legal acts that regulate the application of these models in practice. And finally, fourthly, special attention will be paid to the main features of the legislation currently in force. Such an approach, as it seems, can be extremely useful for Russian businesses wishing to gain a foothold in Turkey.

Establishment and development of the PPP institute

In the history of the formation and development of the legal institution under consideration, two important stages can be traced — the beginning of the last century, when the relevant regulatory act was adopted, which is still in force, as well as the 1980s, which included the reforms of the Prime Minister-Minister of neoliberal views T. Ozal, who largely copied the economic policy of the United States and the UK of that time.

In 1908, in Istanbul, which at that time was the capital of the Ottoman Empire, after extensive discussion and long discussion, the law “On Concession agreements in the field of public services” was adopted. According to experts, the adoption of this normative legal act was caused, first of all, by the increasing pressure from European countries, whose bourgeoisie sought to gain a foothold in the domestic market of the withering Ottoman Empire [18]. At the same time, it should be noted

that concession agreements in Istanbul have been signed since the 1850s. However, it was only by the beginning of the last century that there was a need for a single regulatory legal act regulating the mechanism of interaction of foreign business that flooded into the country with local authorities in the form of a concession. The discussion of the law was long and stormy. The researchers note that before its final adoption, there was a lively discussion in the National Assembly, whose deputies, for the most part, were opposed to providing special benefits and guarantees for foreign capital. Nevertheless, the final document, which the imperial government insisted on adopting, contained numerous provisions that opened wide opportunities for a foreign investor seeking to enter the country in key sectors of the economy — primarily in the field of coal mining and shipping [18].

1980 was one of the turning points for the modern Turkish Republic. This year, after long and exhausting conflicts between right-wing and left-wing political forces, a military coup took place. The decisions of the newly formed government of T. Ozal marked the beginning of a new economic policy in the country, the essence of which was the so-called “neoliberal reversal”. Recall that in the 1950s, a pro-Western Democratic Party already ruled in Turkey, thanks to whose efforts the country joined the North Atlantic Alliance. However, the roots of statism in the country have penetrated so deeply into the public consciousness that it turned out to be impossible to carry out liberal reforms in that period. In the 1980s, liberal sentiments became popular again in the country’s ruling elites. It became clear that the era of unconditional dominance of state corporations and other public institutions in the national economy was coming to its logical conclusion. Leading economists and lawyers of the country started talking about privatization, and in those areas where it seemed impossible — about public-private partnership. In the second half of the 80s, Turkey carried out extremely significant reforms in the field of economics and legislation. It is noteworthy that the initiator of many transformations was the World Bank. It is believed that it was this international organization that “imposed on the country” the first PPP model in the BTO (build-transfer-operate/construction-transfer-management) format, which, nevertheless, was perceived with great caution by the Central Bank and the authorities in charge of the financial sector. Nevertheless, big business in the country, which received great support from the Cabinet of T. Ozala was optimistic. Despite the lack of the necessary legislative framework, the first PPP projects in the format that was widely used abroad in the second half of the last century began to be implemented starting from the late 1980s. It is also noteworthy that Turkish experts currently state the haste and imbalance of the liberal transformations carried out during that period. However, T. Ozal was determined to build effective and, as it seemed to him, mutually beneficial relations with leading Western countries, primarily with the United States. Relations with the USSR, to which the former elites paid considerable attention, have receded into the background in this period.

Legislation governing PPPs

Today, the Republic of Turkey does not have a single regulatory legal act regulating the PPP mechanism, even though the corresponding document has been being prepared for a long time. Since 2005, numerous public hearings have been held in the country on the need to improve legislation in the area we have identified. The discussion was attended by well-known experts, lawyers, and economists in the country. After the discussions, two high-profile attempts were made to modernize the legislation.

The first attempt is related to the preparation of a document entitled “Draft law on the implementation of certain investments and the provision of services within the framework of public-private partnership models”, which was prepared by the Ministry of Development and proposed for consideration by the expert community in 2007 [1]. It is believed that this document largely copied the legislation of the European Union countries. A significant difference is that its norms regulated only those projects in which the share of private business did not exceed 49 %. Moreover, the PPP models were not prescribed in the Draft, which, experts believe, would make it somewhat difficult to implement it in the practical field if approved. For these reasons, the document eventually did not reach the stage of its approval.

In 2009, the Commission on Regulation of Public Procurement and Concession Tenders, formed under the National Assembly, prepared another draft law, which, as it seemed at the time, should have clarified many procedural issues. However, this attempt was unsuccessful. The representative body of Turkey rejected the draft, arguing that “issues of public procurement and concession agreements should be regulated by various regulatory legal acts” [1. P. 206]. As an argument, the deputies proposed foreign legislative practice.

The absence of a single regulatory legal act on PPP is currently an obstacle to the development of the right-wing institution we are considering in the country, as, in fact, well-known Turkish politicians, lawyers and economists constantly write about [14].

Models of public-private partnership

Russian and foreign practice in the field of PPP is based on legally fixed models representing algorithms of actions of participants in an investment project. If in Russia the legislator has provided for two main models, the legal features of which are contained in Federal Law No. 224 dated 07/13/2015. “On Public-private partnership, municipal-private partnership of the Russian Federation and amendments to certain Legislative Acts of the Russian Federation” and Federal Law No. 115 dated 07/21/2005 “On concession agreements”, there are quite a lot of such forms abroad. The legislation of the Republic of Turkey also provides for a wide range of PPP models.

PPP models used in the Republic of Turkey [1. P. 207]

PPP model	Legal act	Scope of application
BTO (build-transfer-operate)	Law No. 6428 of 2013 “On institutions (organizations) in the field of production, transmission, distribution of electricity that are not part of the structure of the Turkish Electric Distribution Consortium”.	Electric power industry
	Law No. 3465 of 1988 “On Institutions (organizations) in the field of construction, maintenance and operation of highways that are not part of the structure of the Turkish National Road Administration”.	Highways, road facilities
	Law No. 3996 of 1994 “On Investment Policy implemented within the framework of the Construction-Transfer-Management model”.	Housing and Communal Services
BOT (build-operate-transfer)	Law No. 4283 of 1997 “On the application of the construction-management-transfer model in the field of construction of electric power facilities and their operation and sale of electricity”.	Fuel and energy complex
BLOT (build-lease-operate-transfer)	Law No. 6428/2013 “On the construction and restoration of facilities in the provision of services within the framework of public-private partnership projects implemented at the initiative of the Ministry of Health”.	Healthcare
	Government Resolution No. 652/2011 “On the structure of the Government and positions held”.	Education
OL (operation license)	Law No.5393/2005 “On Public Authorities in urban settlements”.	Urban and suburban transport, airports
LTM (long term lease)	Law No. 4046/1994 “On Privatization”.	Various infrastructure facilities
Other possible models, such as LDO (lease-develop-operate), DB (design-build) and others.	Law No. 4501/2000 “On the Arbitration Process”.	Various infrastructure facilities
	Law No.576/1908 “On Concession Agreements in Public Facilities”.	Various infrastructure facilities

Note that the normative legal acts listed in the Table do not specifically refer to one or another generally accepted model. However, the very procedure of the participants in the transactions allows us to correlate the emerging legal relations with the generally accepted PPP models in world practice.

Features of PPP in the Republic of Turkey

It seems that the analysis of the legal regulation of PPP in Turkey will be incomplete without systematizing some of its features, which, as we see it, may be relevant for the Russian investor. The study of normative legal acts and scientific literature allowed us to identify some distinctive properties of public-private partnership in Turkey as a legal institution, as well as an ambiguous attitude towards it among the academic community, which is also important.

- Government guarantees. The Turkish legislator has provided for the allocation of state guarantees for such PPP models as BOT, which is mainly used in the energy sector, and OL, which is relevant for projects implemented in transport communications. This provision is contained in Law No. 4749 of 1961 “On Public Financing and Lending”, amendments to which were adopted in 2007. At the same time, it is stipulated that the number of subjects from the state side may include a limited number of persons — ministries and departments, social insurance funds, state corporations, state banks and investment funds, as well as local governments. The essence of the guarantees is that in case of exhaustion of the planned funds, the private party gets the opportunity to receive a special lending regime supported by the Treasury. The procedural part of this provision is also regulated by local acts of the Treasury.
- Delegation of authority to local governments. As you know, Turkey is a unitary country, while actively implementing the principles of local self-government on the ground, which also leaves its mark on national legislation. Recall that in the Russian Federation, PPP has a two-level legal status — a public-private partnership at the federal and regional levels and a municipal-private partnership. Often, both levels are combined into a so-called public-private partnership (PPP). Approximately the same mechanism is provided in countries such as the USA, Mexico, Finland, Norway, Switzerland, Spain, etc. [19. P. 82] This circumstance means that some projects, as a rule, of local importance, are carried out based on the powers, needs and decisions of lower-level authorities, which implies some decentralization in the management

system. In some jurisdictions, such as the United Kingdom, Canada, Japan, Denmark, Greece, and others, the decision-making and control system is more centralized. Even though Turkey does not have a single regulatory legal act regulating PPP, the solution of some issues is delegated to the level of local government [19. P. 82]. Such issues include, for example, the organization and holding of a competition, the preparation of documents, the definition of state support measures, etc. We are confident that this provision may be of particular interest to a Russian investor, given the close economic and cultural relationships of some regions of Turkey, such as the Black Sea region, with some subjects of the Russian Federation.

- Openness of the PPP to the foreign investor. Given the fact that in recent years the level of cooperation between Russian and Turkish business partners has reached a qualitatively new level, it is impossible to ignore the issue of the rather positive attitude of the Turkish authorities implementing PPP projects to foreign investors. At the same time, as we see it, it is necessary to pay attention to two important and interrelated factors. Firstly, in recent years, in the Russian and foreign scientific literature, there has been an assessment of PPP as a mechanism for implementing the “soft power” of the state, which means the ability to “shape the preferences of others” [20]. Of course, with the help of such a tool as a private initiative, in the case of developing a competent approach to forming their own proposals, Russian business has all the opportunities not only to gain a foothold in Turkey, but also to influence the course of economic policy pursued in this country. Secondly, according to a number of experts, foreign investors in Turkey are most attracted by four areas — healthcare, education, public transport and energy [15]. We are confident that the consolidation of Russian business in these sectors of the Turkish economy will be a powerful help in creating a positive image of the domestic economy in this country.
- Ambiguous attitude towards PPP in the academic community. Of course, one of the most debated issues in the academic environment remains the problem of PPP efficiency. Just as in many countries where PPP is actively used, in Turkey it is often asked how justified such a type of cooperation between the state and business is in modern conditions. It is noteworthy that Turkish researchers have been analyzing this problem for several years using modern achievements in econometrics. For example, one of the most discussed topics remains the problem of the interdependence of the country’s income growth with the volume of investment injections into the economy implemented in the PPP format [16]. The researchers claim that this dependence can be traced

quite clearly and unambiguously. Some of them proved that in those years when the number of PPP projects reached its maximum, for example, in 2011–13, GDP growth also showed the highest rates. At the same time, a reservation is made that the analysis of purely statistical data without taking into account other factors, such as favorable international conditions, the political climate in the country, information support for government investment activities, etc., cannot give the most objective idea of the effectiveness of PPP.

It is impossible to ignore the fact that the attitude towards the legal institution under consideration in Turkey also has some ideological overtones. Indeed, the fact that public-private partnerships are becoming more widespread in Turkey causes some concern among many researchers. According to our observations, the cooperation between the state and business is mostly criticized by researchers who adhere either to the extreme left or, conversely, to the extreme right. Scientific publications funded by the so-called conservative-traditionalist circles, for whom the *laissez-faire* principle is a kind of indisputable icon of economic policy, can serve as a vivid confirmation of this. For example, in studies published in the scientific publication “Study of the Turkic World”, a certain threat to the national economy is perceived by the fact that the financial sector is unable to develop a “truly market-based” interest rate for PPP projects, the basis of the mechanism of formation of which would be the principle of ensuring competition of projects and equal access to information for all participants in an inherently complex transaction [14]. As for criticism from the left, in this case, most often, attention is focused on high tariffs that hit the pockets of socially vulnerable segments of the population. Such a situation arises, in their opinion, by the inability to ensure maximum openness and publicity for the public of the process of implementing PPP projects [21. P. 188].

Conclusions

As we see it, the main conclusions of our research include the following provisions.

Firstly, even though public-private partnership is a relatively new legal institution, the widespread spread of which is usually associated with the so-called neoliberal turn of the 1980-90s, we observe legislative regulation of cooperation between the state and business in Turkey at the beginning of the tenth century. As mentioned above, one of the normative legal acts adopted in the Ottoman Empire still finds its application in modern Turkey. Nevertheless, it would be a mistake to claim that the concept of economic policy in Turkey has developed in isolation from the global trend. In the

era of T. Ozal, who relied on the support of Western countries during the implementation of inherently neoliberal reforms in the 1980s, the government initiated the process of adopting appropriate legislation, and under the current President R.T. Erdogan, the process of implementing the PPP mechanism was significantly modernized and its scope was significantly expanded.

Secondly, in modern Turkey there is no single regulatory legal act regulating the implementation of PPPs. All attempts to adopt such a document were unsuccessful. Despite this, PPP is increasingly being used in various infrastructure projects. PPP implementation models are also different and regulated by different regulatory legal acts. At the same time, despite the unitary and highly centralized system of public administration, some of the powers in determining the conditions for interaction between public authorities and business have been transferred to the level of municipalities.

Thirdly, it would be extremely rash to claim that PPP finds wide support in the ruling elites of Turkey and in the academic environment. This issue in this country has its own ideological background, causing lively discussions among economists, lawyers and political scientists.

Fourth, PPP in this country is open to foreign investors, which, as we see it, should not be ignored by Russian business and the domestic academic community. The strategy of “soft power” in today’s conditions is becoming relevant again. All the main four areas in which foreign business is represented to a much greater extent — healthcare, education, road transport and energy — may be of interest to a Russian entrepreneur. In order to develop a competent strategy for the development of the Turkish economy, a more in-depth study of the specifics of Turkish legislation regulating the mechanism for the implementation of public-private partnerships is necessary.

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Государственно-частное партнерство в Турецкой Республике: история становления и особенности правового регулирования

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Аннотация. В статье анализируется государственно-частное партнерство как правовой институт Турецкой Республики. Авторами исследуется процесс становления и развития данного института в контексте общемирового тренда его популяризации как инструмента экономической политики. При этом подчеркивается, что если в эпоху Османской империи государственно-частное партнерство использовалось как способ давления стран Европы на ослабевающую Порту, то в конце прошлого века данный институт получил широкое распространение в стране как механизм реализации нелиберальной экономической политики. В работе дан анализ действующего законодательства, регулирующего государственно-частное партнерство. Авторами констатируется отсутствие единого нормативно-правового акта, а также анализируются причины сложившейся ситуации. Суть каждого закона раскрывается в неразрывной связи с различными моделями государственно-частного партнерства. Отдельное внимание уделяется секторам экономики, в которых применяются те или иные модели. Особое внимание уделяется особенностям правового статуса государственно-частного партнерства в Турции. Предполагается, что такой особенностью можно считать активную поддержку государства в вопросах финансирования наиболее значимых проектов. В работе подчеркивается нацеленность властей страны на привлечение иностранных инвестиций посредством государственно-частного партнерства. Немаловажной особенностью авторы считают широкие полномочия муниципальных органов власти в сфере привлечения бизнеса к реализации инфраструктурных проектов. Подчеркивается, что данное обстоятельство не должно уйти от внимания российских исследователей, так как участие российских коммерческих организаций в проектах, реализуемых муниципальными органами власти, открывает новые возможности в деле укрепления влияния и позиций отечественного бизнеса в этой стране. В статье исследуется присущая Турции идеологизированность подхода к анализу государственно-частного партнерства со стороны академического сообщества.

Ключевые слова: государственно-частное партнерство, Турецкая Республика, Османская империя, правовое регулирование, модели государственно-частного партнерства, экономическая политика, неолиберализм, муниципальное образование, государственная гарантия

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