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„CITIZENS OF BERLIN: CLAIMING BACK OUR WATER”

From privatization towards public property and democratic control of the commons water

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First of all, I should like to draw your attention to the colossal victory the citizens of Berlin have attained in a referendum started by the action group ‘Berliner Wassertisch’. I mention this, because things like that tend to be forgotten too soon by “Lefts” as they will immediately turn to the next issue.

Our victory against Berlin Promoters of Privatization

The action group “Berliner Wassertisch” was started in 2006 chiefly by activists of the attac-movement and was joined right from the beginning by people opposed to privatization of commons, such as myself, former member of the Berlin-state parliament. Our first meeting was **in May 2006**, it took **6 long years** until the **referendum** was won on **13. February 2011!**

To pave the way towards this referendum we even had to carry our fight against the government of Berlin (formed by SPD and Linkspartei at the time) to the Berlin constitutional court. We did win the suit in **October 2009**.

In the referendum in 2011, under the political heading “**Citizens of Berlin reclaim their water**”, a bill we had drafted was put to the vote which says in § 1: “Any contracts, decisions or other agreements related to the privatization of Berliner Wasserbetriebe (Berlin Water Works) between the state of Berlin and private companies are unconditionally to be published. This equally applies to any future contracts, decisions or other agreements.” The documents are to be published by the Senate of Berlin on Internet.

[www.parlament-berlin.de/pari/web/wdefault.nsf/vFiles/C16-00103/\\$FILE/Gesetz%20Offenleg%20Geheimvertr%20z%20Teilpriv%20Berl%20Wasserbetr.pdf](http://www.parlament-berlin.de/pari/web/wdefault.nsf/vFiles/C16-00103/$FILE/Gesetz%20Offenleg%20Geheimvertr%20z%20Teilpriv%20Berl%20Wasserbetr.pdf)

Our bill did no more than prescribe transparency, but its effects are enormous. Water being the core of public services – as the Berlin constitutional court ruled when admitting our right to start a referendum in 2009 - it must not be in any way subject to secret agreements whether past or future!

“Our” law has been the first in Berlin ever that was passed not by Berlin’s 149 deputies, but by the votes of 666,235 citizens of Berlin. Constitutionally, legislation by citizens’ vote is considered equivalent to that by parliament.

Thus, it was by way of the referendum process that the citizens of Berlin have been able to force Berlin’s politicians to take up the issue – a task they had stubbornly evaded till then.

What is the political impact of the law passed by referendum?

666,235 citizens of Berlin voted for the bill, i.e. 27% of the voting population. By comparison, in the Berlin general election of September 2011, the Social Democrats (SPD) emerged as strongest party with 413,332 votes, i.e. 16.7%.

- The SPD thus gained 47 seats in Berlin parliament
- With our referendum result we would have gained on average 8,810 votes per seat, i.e. **76 seats** equivalent to **51% - the absolute majority!**

By the referendum the people have challenged the government! There were only 1.7% voting for the position they had put forth!

Our political message was clearly understood by both parliament and government. All political parties in Berlin have been feeling obliged ever since to admit that the privatization of water had been a mistake.

As a consequence, the government presently in power is now involved in the lengthy process of buying back the shares held by the private shareholder companies of RWE (German electricity giant) and Veolia (French global water supplier).

So far we have indeed won a considerable victory over neoliberal competition-politics harming public interest.

Why privatization at all?

In Berlin, the general financial situation had deteriorated dramatically after the reunion of Germany. Even before, Berlin was in debt to the amount of 34.8 billion Euro. The then conservative government of CDU/SPD argued that Berlin could consolidate its budget by availing themselves of privatization on a large scale: sales of public property would bridge the gap up to the year 2000 by which time the budget would be balanced. So far their promise at the time. **None of it was true, however. Public debt in Berlin has increased to the amount of 62 billion by 2012. Taking into account public guarantees the figure is even higher: about 80 billion.**

Having been sold to private investors, public works (electricity, gas, water) and more than 200,000 flats owned by municipal tenement companies before, all these enterprises have now become subject to maximization of returns - to the cost of the population. **Privatization is the core of all austerity politics!**

By reduction of public spending a part of the GDP – generated under public administration before – has been placed at the disposal of private enterprises exclusively for their own growth.

It is the – needless to say profitable – business of commercial consultancies to spread the belief that privatization will lead to financial recovery of public budgets –and politicians in fact do (or pretend to) believe the tenet. It is entirely false, however.

By privatization both public debt and individual liabilities in terms of fees and prices are increasing, e.g. of water. **“Growth”, however, will exclusively benefit the respective private investors. Our case in point here: RWE and Veolia on average had 14% annual return each on their investment in Berlin water, for the duration of 13 years.** Total profit of RWE after reselling their share to Berlin is 1.347 million Euro, that of Veolia 1.393 million Euro, **sum total 2739 million Euro.**

http://berliner-wassertisch.net/content/docs/analysis.php?page=analysis#roi_rwe_veolia

There would have been a chance to cancel the contract in 2003 under a government of the Left (SPD / Linkspartei) which would have saved at least 740 million Euro!

Privatization of Berlin Water: failure of politics

The constitution of Berlin does not permit privatization of monopolies. Protests against the sale of Berlin Water therefore were growing as the government's intentions became known to the public. In this situation the CDU / SPD government had recourse to the strategy of PPP: Regardless of opposition to their plans they signed away 49.9% of Berlin Water to the above-mentioned private enterprises (RWE and Veolia) in a **public-private-partnership**-contract, claiming at the same time that with 51,1% still in public property supremacy of government was safely retained.

As a matter of fact, however, operation and control was entirely passed away into the hands of the private companies by the terms of the contracts (being kept secret). Turnover and profits, of course, were secure, for everyone needs water! No risk!

Features of the PPP-contract: 30 years' guarantee of return on investment, secrecy of the contract.

In the contract, the private purchasers are given the guarantee of return on their investment calculated by the **formula $r + 2$** (i.e. in addition to a given rate of interest r a surcharge of 2% was guaranteed – in a contract on water with no risk involved!). The actual figure was to be calculated every year on the basis of the capital required in running the enterprise – the base of assessment being a figure automatically increasing over the years by the very method of its calculation.

Even the tender in 1999 – commissioned to Merrill Lynch – was containing this guarantee of return on investment and was kept from the public accordingly. In the actual contract agreed in June 1999, effectual operation of the enterprise was transferred to the private companies. The contract, too, remained unpublished. At the same time, a law on “partial privatization of Berliner Wasserbetriebe” was passed in parliament. **Law and contract complement each other.**

Against this law, the opposition parties (Grüne and Linkspartei at the time) filed a constitutional complaint in the Berlin constitutional court. (In Germany, a complaint of this kind will require a minimum of 25% of the deputies in parliament.) Judgment on the complaint was passed in the Court in Oct, 1999 – deeming legal the privatization as such, refuting as unconstitutional, and therefore void, however, the additional 2% profit as laid down in the law on partial privatization which would raise the water price inadequately. The real impact of the actual guarantee, as given in the secret contract, however did not come under the verdict

of the court which, while passing judgment on the law, did not care to take any notice of the contract. Yet, the judgment had at least the positive result that water prices could not be increased to the extent originally envisaged.

But the partial success in court could only have been effective, if the law - with the alterations due to the court's judgment - had remained in force. The government, however, in order to meet its guarantee obligations incurred in the contract, decided on an amendment of the law.

This was done by the **Left! Social Democrats and Linkspartei!** Due to a moratorium of prices from 1999 until 2003 the effects of the contracts signed by the CDU / SPD government in 1999, first came to be effective by January 2003. At that time government was in the hands of a left coalition: SPD / Die Linke. **Based on the strength of the constitutional jurisdiction of October 1999, they could have changed the situation. They could have cancelled the contracts because of their obvious severe legal flaws.** Instead, they decided on an amendment of the privatization law with the sole aim of rendering ineffective the judgment, or, in economical terms, of providing full compensation to the private companies for the reductions the court had imposed on them. They decided to stick to the contract – even at the cost of substantially altering the privatization law.

http://www.berlin.de/imperia/md/content/zep/stellenpoolgesetz_stpg_20031209.pdf?start&ts=1140442187&file=stellenpoolgesetz_stpg_20031209.pdf

The new version of the law was but a fraud to the detriment of the population of Berlin. The responsible member of the senate (economics) at the time who saw to it that the terms of the contract were maintained in spite of its legal defects held his office as a functionary of Linkspartei. Why did he do what he did? Why did the Berlin Senate as a whole do what they did?

By the time the contract was signed in 1999, the parliamentary opposition had already filed their suit (Grüne and Linkspartei, then opposition). Government (CDU / SPD) and private contractors anticipating an outcome negative to their purposes had agreed in their contract on a regulation providing “**compensation of disadvantage**” in case of profit-reducing jurisdiction. It was a worse than scandalous agreement which was accepted by Berlin government in the (secret) contract under the threat of the private buyers to reduce the price (1.68 billion Euro) substantially, if the court would decide unfavorably (which became known subsequently in spite of all the secrecy). Parliament agreed – even to the illegal compensation clause of which most members were not even aware at the time. The general public was told: “Privatization is going to cure the public budget”. The truth about guaranteed profits was not meant to be known.

This truth is: the contract signed in 1999 is a very costly contract of credit. The debts have been incurred by diverse governments of Berlin to the direct cost of Berlin's citizens who cannot avoid paying them when paying for water they necessarily consume.

This was what CDU and SPD originally set in motion in 1999, but Linkspartei joined as soon as they got access to their share of government power. The obvious chance at the end of the moratorium in 2003 of using the constitutional court's verdict of 1999 to cancel the contracts was never seriously considered neither by SPD nor by Linkspartei.

Berlin's population realized: we are being deceived about water prices

After the amendment of the privatization law in 2003 water prices in Berlin stiffly rose: by 15% in 2003, by 35% till 2011. For, since 2003 water prices are containing covert “calculatory cost” which has increased severely. In 1999, calculatory cost was approximately 41.1% of total cost, by 2011 its share in total cost had risen to 51.8%. It is there that return on investment is hidden!

Our rough analysis of this state of affairs - to which we tried to draw attention, ignored by both press and politics - has recently been corroborated in a verdict pronounced by the **federal cartel authority (Bundeskartellamt)**! Having come under heavy pressure by our successful referendum campaign, the Berlin secretary of economic affairs (of Linkspartei) in 2010 had called in this office to check the Berlin water prices – even before the referendum itself took place!

After detailed inspection, the federal cartel authority in 2012 finally pronounced its verdict on “**abuse of water prices**” which imposes a reduction of prices by 17% to be complied with from 2012 – 2015, in absolute figures by 254 million Euro. (The verdict applies to drinking water only. Unfortunately, sewage is run by different legal rules in Germany, though prices are calculated by the same mechanisms – and prices of sewage have increased even more).

Currently, Berliner Wasserbetriebe are repaying their customers for overcharge in 2012, total amount so far is 58.6 million Euro. They are paying under legal reserve, however: arguing that the office of cartel was not entitled to do any checking, they had filed a suit against the office. Hearing of the case took place in September this year, the court will pass judgment on 22nd January 2014. The hearing leads us to expect a decision in favour of the federal cartel authority.

This would be another success of Berlin’s citizens – success of their claim of transparence in public affairs!

Which are the aims of “Berliner Wassertisch” nowadays?

What we definitely do not want is that after remunicipalization things go on as before: government instead of private enterprises now making profit at our cost - as we unavoidably are consuming water. This is what the present Senate of Berlin is proposing (SPD/CDU).

Against this, we are claiming as before: a water enterprise in full public property under full public control. This will require amendments in:

- Berliner Betriebsgesetz (law on regulating Public works of Berlin)
- Wassertarifordnung (administrative order of water tariffs)

“Berliner Wassertisch” has provided a “Water Charta” which we just start to circle for discussion and which we hope to establish as a fundamental standard of future water policy in Berlin. [<http://berliner-wassertisch.net/assets/docs/Berlin%20Water%20Charter.pdf>] We aim at public participation the form of which is yet to be deliberated upon. Ultimately, we should like to see installed a public body of citizens endowed with genuine participatory rights of decision in Berlin water politics in general and in Berliner Wasserbetriebe in particular, a public body which we tentatively call “Water Council”.

We want to participate in decision-finding and decision-making – via this body yet to be created – e.g. about investments necessary in future, about the way of financing such investments, about ecological standards.

As we have learned (to our cost!) by the Berlin privatization of water: we cannot rely on politicians, no matter which party. They will forever prefer their share of power over public interest.

There still is a lot of work ahead and we will actively continue to promote the interests of Berlin's citizens. We will go on!

(Berlin, 17th Oct, 2013)