

# **The Remunicipalisation of Water – Some Reflections on the Cases of Potsdam and Grenoble**

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## **1 Background: Current Trends in the Privatisation of Water**

At the turn of the millennium, the expectations for a fast commercialisation of the water sector were high. In these years, conventional water privatisation had reached something like a peak level even though at that time only around 5% of the world's drinking water services were in private hands. To give a non-representative but characteristic example of this time, I would like to refer to the Swiss investment bank Pictet. Pictet set up the first investment-fund for water, and was expecting a big privatisation wave. The manager of the investment fund, Hans Peter Portner, was anticipating a worldwide increase of the share of people being served by private companies from 7% in the year 2002 to 17% until the year 2015. For the USA and Europe his estimations were even higher: from 14% to 65% in the US and from 38% to 75% in Europe.<sup>1</sup>

But reality turned out differently, and the trend was not as positive as Portner and others had expected. Although it would be misleading to say that the privatisation trend in the water sector has been stopped, there still have been a series of serious set backs. In recent years the market leader Suez had to depreciate heavy losses in Argentina and other countries, and withdrew completely from the water service in Manila because expected profits could not be reached.<sup>2</sup> In 2006 the third biggest private water supplier worldwide, RWE, sold its water subsidiary Thames Water with losses. Currently RWE is also trying to sell its subsidiary in the USA, American Water, but has difficulties finding buyers at the expected price level.<sup>3</sup>

It is important to point out however that one should be cautious about interpreting these examples as a fundamental turnaround. Rather, there is a change of strategies regarding water privatisation. Scrutinizing the change of strategies more closely, three main trends can be identified. First, companies increasingly seek for public-private partnerships (PPPs). In PPPs the state often guarantees a minimal revenue, hence, minimising the risks of the companies. Secondly, financial investors such as hedge-funds are beginning to play a vital role. The most known example in this context is the Australian Investment Bank Macquarie which bought Thames Water. And thirdly, traditional water companies realign themselves and invest more into the "second line" that is in technology and consulting, in sewage and desalination. In these fields, they are much less exposed to potential protest and resistance.

## **2 Global Struggles for the Social Appropriation of Water**

As shown in the beginning the privatisation trend in the water sector is not yet over, but it had to undergo serious changes in strategies. One crucial reason for this is the fact that there has been a significant (and not infrequently successful) opposition to privatisation from political parties, social movements and unions in this sector.<sup>4</sup> These mobilisations have not only managed to stop privatisation plans, but in some cases, they were even successful in retrieving privatised water back

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<sup>1</sup> (Köhler 2002).

<sup>2</sup> (Hall 2003: 6-7).

<sup>3</sup> Also some other water service providers couldn't reach their profit expectations and have evolved from expansion plans or have been sold (Hall/Lobina 2006b: 8).

<sup>4</sup> See (Hall/Lobina 2006b; Barlow/Clarke 2003: 227-235).

into the public domain. Put differently, in some cases there has been a social re-appropriation of water.<sup>5</sup>

Some overviews of such cases have been published recently, the most comprehensive example is the book project “Reclaiming Public Water”, co-edited by the Transnational Institute and Corporate Europe Observatory and up till now translated into ten languages.<sup>6</sup>

When we take a closer look at these cases, we see a complex picture. The main causes for the re-appropriation of the ownership ranges from the voluntary withdrawal of the private investors to open street battles. With the exception of Australia, the cases are distributed over all continents, but with a concentration in Latin America.

Probably the best known case of a re-appropriation of water occurred in the Bolivian city of Cochabamba. In September 1999 the local water company was privatised through a concession contract to a private consortium led by Bechtel. Results of the privatisation were a massive increase of the price and expropriations of local water networks. Angry protests and a general strike were the responses of the affected citizens. In April 2000, after several days of riots, the government decided to take the water supply back in its own hands. While the Bechtel consortium is claiming compensation, ongoing work in Cochabamba is renewing the structure of the water company through the inclusion of elements of participatory democracy.<sup>7</sup> Cochabamba has found imitators: In El Alto, the third largest city of Bolivia, a Suez-led consortium acquired a license for the water supply. Due to non-compliance with agreed goals, price increases and protests of the population, the government finally remunicipalised the company, and a process of democratisation was set in motion.<sup>8</sup> In 1999 Azurix, a subsidiary of the US-corporation Enron acquired a concession for parts of the water supply in the region of Buenos Aires. After three years, in which the company neglected necessary investments in the infrastructure, Enron went spectacularly bankrupt and the concession was abandoned. Consequentially, the management was then taken over by the employees and their union.<sup>9</sup> In 1994, the British company Severn Trent got a five-year concession for the water supply in Trinidad. In 1999, this privatisation was reversed. The government refused to prolong the contract because of dissatisfaction with the private operator and a negative public opinion on privatisation.<sup>10</sup>

In Dar es Salaam, the capital of Tanzania, the water company was delegated to a private consortium led by the British company Biwater in 2002, due to pressure by international financial institutions. In similar vein, the privatisation led to protests of the citizens. Again and again they were confronted with the situation that no water came out of their taps, yet the water bills still came. In 2005 the government took back the management, and since then the private consortium is trying to sue compensations.<sup>11</sup> In 2002 in Nkonkobe, South Africa, a court annulled a privatisation contract with a Suez subsidiary because the contract was accomplished under corruption. Another impressive form of social appropriation of water provision is the technical circumvention of pre-paid water-meters, with which anti-privatisation activists in different places in South Africa react to the commercialisation and privatisation of water.<sup>12</sup>

In 1993, in the capital of the Philippines, Manila, water supply was split in two parts, and privatised through two concession contracts. In the western half of the city a consortium, in which also Suez was involved, took over the operation. When in 2001 the regulatory authority refused to accept a further price increase, the company stopped to pay the fees for the concession to the city. Since no conciliation of the conflict could be arranged, the private investors sold 84% of its shares back to the city.<sup>13</sup>

The experiences of social appropriation of the water supply are not limited to countries of the global south as examples from the United States, France and Germany show. In 1999 a consortium led by Suez managed to get the largest concession contract in the US in Atlanta with a term of the contract for 20 years. After only three years, however, the city cancelled the agreement in advance and took over the operation in its own responsibility. In the Years following the privatisation, more than half

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<sup>5</sup> Compare here also the French term “appropriation sociale” and the German term “gesellschaftliche Aneignung”.

<sup>6</sup> (Balanyá *et al.* 2005). Other overviews can be found in Hall, Lobina and de la Motte (2005: 288-290) and on the website of the Indian NGO Manthan Adhyayan Kendra (2007).

<sup>7</sup> In practice, this democratisation comes with numerous difficulties, see (Sánchez Gómez/Terhorst 2005).

<sup>8</sup> (Pérez 2005).

<sup>9</sup> (Amorebieta 2005).

<sup>10</sup> (Mycoo 2005).

<sup>11</sup> (WDM 2006).

<sup>12</sup> (McKinley 2005).

<sup>13</sup> (Public Citizen 2003; Hall/Lobina 2006a: 31).

of the employees had been dismissed, the company increased its demands for subsidies from the city and delayed necessary repairs. As a consequence citizens were advised to boil their drinking water.<sup>14</sup> An other recent example in the US is the small Californian city Felton, where in 2008, as a consequence of a referendum, the city bought its water utility back from the RWE subsidiary California American Water, despite heavy resistance by the company.<sup>15</sup> In the French city of Grenoble, the water was returned into public hands in 2000. The decision was preceded by a public campaign by citizens and a court decision declaring the privatisation invalid due to corruption and false information. In Germany, the city of Potsdam made headlines when in 2000, shortly after the privatisation, the water company was remunicipalised.

In the following, I will present these last two European cases in more detail, since they show how different the processes of remunicipalisation of water can be.

### **3 The Case of Potsdam**

Potsdam, the capital of the German federal state of Brandenburg, is a city with 150.000 habitants close to Berlin. In 2000, only short after the privatisation, the city remunicipalised its water company. Although it is an interesting case, there is still only little literature about it. On December 17<sup>th</sup>, 1997, the city council of Potsdam decided to sell 49% of the shares of the “Wasser Potsdam GmbH” to Eurawasser, a subsidiary of Suez and the German corporation Thyssen for a purchase price of DM 167 million (€ 85 million). It lasted a few more months until all the complicated details of the privatisation were fixed in a total of 13 individual contracts. The agreements between the city and the investors were subjected to confidentiality, thus only a few aspects of the contract are known. One of the most important aspects is the fact that despite its minor share of 49%, the power in the company was de facto conveyed to Eurawasser.

Conflicts between the Eurawasser and the city became evident, when in 1999 the vice-director who had been delegated into the board of the company by the city retired, and his successor Peter Pfaffhausen, who at this time was also the manager of the municipal electricity company, refused to agree with decisions disadvantageous for the city. These were, inter alia, decisions on procurement contracts in favour of Eurawasser and the way of recording of expenditures: Eurawasser was interested in recording expenses not as operating costs but as investments, since investments had to be paid by the city alone. As there was no satisfactory solution in sight, the city, behind the scenes, began to prepare a remunicipalisation-strategy. Due to the complicated construction of the treaties, these preparations took five months.<sup>16</sup> The formal act of remunicipalisation finally happened, totally unexpected by Eurawasser, at the shareholders' meeting of the company on June 19<sup>th</sup>, 2000. With an accurately prepared trick, the city managed to take Eurawasser by surprise and to achieve a decision of the company to agree to sell its shares back to the city.

Formally the possibility of a buyback of the company had always existed,<sup>17</sup> but because of the necessity to have the approval of the water company and the restitution of the purchase price, a buyback seemed to be practically impossible. But as the city studied the contracts accurately, it detected that the original purchase price for the privatisation had actually not been paid by Eurawasser. Instead, the DM 167 million had been paid by a bank which, in return, got an entitlement for the revenue from the water charges of the company over a period of more than 20 years with a value of about DM 400 million (€ 205 million) (forfeiting). Thus Eurawasser in fact did not pay anything for the purchase. Consequentially the city reasoned, that for a buyback it would not have to pay anything back to Eurawasser. Without disclosing its intentions, the representatives of the city in the shareholders' meeting brought up the proposal to equip both managing directors, of which one was dispatched by the city and one by Eurawasser, with exclusive representation rights. Immediately after Eurawasser agreed to this proposal, Mr. Pfaffhausen, the managing director dispatched by the city, used this right to accept the buy-back.

Eurawasser, totally surprised by the events, protested against the decision and claimed for compensation. It remains unsure whether a lawsuit against the surprising buyback or for

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<sup>14</sup> (Segal 2003).

<sup>15</sup> (Hachfeld 2008). For other cases in the US see (Public Citizen 2005; Flynn/Baudouris 2005).

<sup>16</sup> (Attac 2003).

<sup>17</sup> (ibid.).

compensation payments would have been successful before a court. Particularly Suez was striving to avoid a court trial, fearing a slur of its international reputation when details of the conflict were to be released to the public. Thus, at the beginning of 2001, after several discussions, both parties settled the conflict on their own. From the content of this secret agreement only few aspects are known: Eurawasser got a last bunch of service orders and received financial compensation. The amount of this compensation is unknown, but estimates range up to DM 25 million (€ 12.8 million).<sup>18</sup>

The main reason for the remunicipalisation in Potsdam according to the city were the future price developments as projected by Eurawasser: The water price should have increased by over 100% reaching € 8.39 per m<sup>3</sup> until 2017.<sup>19</sup> But the fact that the prices would increase through the privatisation was predictable for the city. The main reason for the price increase is the forfeiting used for the financing of the privatisation deal. In effect, this is just an expensive credit for the city, whose repayment has to be borne by the water users. Accordingly, due to the continuity of the obligations, even after the remunicipalisation the tariffs continue to rise (though weaker than in the forecasting of Eurawasser).

Overall, the remunicipalisation in Potsdam had ambivalent results. On one hand, through clever and tricky action by the city the water provision was withdrawn from the profit interest and the control of Eurawasser. This aspect can be seen as a process of social appropriation of the ownership of the company, even if the city and the customers pay a high price for this. On the other hand, the obligations from the forfeiting are persisting, and, to the detriment of users, the for-profit logic in Potsdam's water supply and sanitation is still being kept.

## 4 The Case of Grenoble<sup>20</sup>

Another interesting example of social appropriation of water is the remunicipalisation in the French city of Grenoble. Grenoble has 158.000 habitants and lies in the French alps in the south-east of the *République*. Under important influence of the mayor Alain Carignon, and against the protests of environmental and citizens' associations and unions, the council decided on November 3<sup>rd</sup>, 1989 to privatise the cities water supply and sanitation.<sup>21</sup> The privatization was arranged according to a concession model that is widespread in France. The city and the *Compagnie de Gestion des Eaux du Sud-Est* (COGESE), a subsidiary of Suez, agreed on a 25-year concession contract. The contract comprised that the ownership of the infrastructure should formally remain in public ownership, while the operation was consigned to the private investor. The structure of the contract was entirely unfavourable for the water users. Instead of paying the price for the concession – an amount of Fr 150 million (about € 23 million) – at the beginning of the concession period, COGESE stretched the payment over 15 years and passed it on to the users.<sup>22</sup> Consequentially and also due to procurement contracts awarded to other subsidiaries of the company, through fraudulent pricing and the falsification of balance sheets, the privatisation was a lucrative investment for the COGESE and its parent company Suez. The regional court calculated that the sum of these extensive costs to the detriment of users and taxpayers would have been over one billion francs over the whole 25-year contract period.<sup>23</sup>

But the operation fortunately did not last for so long. In the mid-1990s, two events changed the situation. First of all, the majority in the city council alternated after the elections of 1995, and a majority of leftists and greens dissolved the hitherto ruling conservatives. More importantly however, and probably also an decisive factor for the change of government, was the second event. It had been released to the public that corruption at the highest level had influenced the privatisation in 1989. Alain Carignon, the mayor who had personally accomplished the deal, received financial support for his electoral campaign in return, as well as free flights, a luxury apartment in Paris and other gifts with a total value of Fr 18 million (€ 2.7 million).<sup>24</sup> Together with Jean-Jacques Prompsy,

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<sup>18</sup> (Schellenberger 2001).

<sup>19</sup> (Attac 2003).

<sup>20</sup> In the following, I will look at the water company of the City of Grenoble. For the water provision and sewage in the region Grenoble, that has also been remunicipalised, see (Lobina 2006: 25-29).

<sup>21</sup> (Hall/Lobina 2001: 7).

<sup>22</sup> (Pflieger 2003: 338).

<sup>23</sup> (Hall/Lobina 2001: 7-8).

<sup>24</sup> (Godoy 2003).

responsible manager of Suez and Marc Michel Merlin, president of COGESE, he was sentenced to prison and to large fines in 1995. In 1998, this judgement was confirmed by the appeal court, who also stated that the water users in Grenoble could sue for compensation for the overpricing.<sup>25</sup>

These two events initiated the process of remunicipalisation of the water supply of Grenoble. But as the council feared compensation claims by Suez, the first approach was not very far-reaching. After new negotiations with Suez in 1996, the public-private *Société des Eaux de Grenoble* (SEG) was founded, of which the city held 51% of the shares, while the remaining 49% were owned by Suez. Despite its minority, the private group, however, had extensive veto rights in all important decisions. And the SEG did not operate the company on its own, but outsourced the operation to the *Société Grenobloise de l'Eau et de l'Assainissement* (SGEA), another 100% subsidiary of Suez. Furthermore, the city assumed the debt of COGESE (Fr 30 million, = € 4.6 million), agreed on a disproportional distribution of the profits, and guaranteed to take over the losses to the SGEA which resulted from subcontracting agreements that the company had awarded to other subsidiaries of Suez.<sup>26</sup> As a result, the transfer of the water supply from a private into a public-private company came with no improvement for water users and the citizens of Grenoble. On the contrary the new contracts secured Suez even higher profits.<sup>27</sup>

The crucial push for a real remunicipalisation in the end came from a citizens' initiative and was accompanied by further court decisions. Raymond Avrillier, member of the socialist-environmental voters' alliance *Association Démocratie-Écologie-Solidarité* (ADES), who had already protested against the privatisation and filed a lawsuit in 1989,<sup>28</sup> finally won his case: On October 1<sup>st</sup>, 1997, at the second instance, the *Conseil d'Etat* decided that the original decision to privatise the water company was illegal due to corruption and misinformation. Two other court rulings on August 7<sup>th</sup>, 1998 annulled the decision of the city council to transfer the water supply in the public-private SEG as well as the water prices, and on May 12<sup>th</sup>, 1999, also the former tariffs of COGESE were declared illegal.<sup>29</sup>

At the same time, with instruments of public relations and lobbying, the citizens' initiative *Eau Secours* increased the pressure on the city council. The movement informed the citizens of Grenoble in regular publications and on its website about the structure of the water supply and revealed the mechanisms which guaranteed Suez excessive profits in the new constellation. In two open letters to members of the city council the initiative appealed for the re-transformation of the water company into a municipal entity operated directly by the city.<sup>30</sup> The work of *Eau Secours* and the court decisions caused a change of opinion in the city council, who on March 20<sup>th</sup>, 2000 decided to fully remunicipalise the water services. The new legal status<sup>31</sup> led to a stabilization of water prices and to a significant increase in investment. The replacement of outsourcing by own provision of services saved money, and the company is no longer designed to generate profits.<sup>32</sup>

The remunicipalisation of the water company of Grenoble was a social appropriation of ownership. Besides this, there is also evidence for processes of social appropriation power and of the knowledge that is connected with the operation. In the new company, next to six representatives elected by the city council, five experts of civil society (*personnes qualifiées*) are members of the board. They are also appointed by the city council, so that there is still no practice of direct democracy participation. The originally envisaged composition, with only one third of board members elected by the city council, could not be set in force due to a new national law on the structure of companies in *régie municipale*.<sup>33</sup> A big change, however, has occurred in the communication policy of the company, improving the access of users and the general public to relevant information substantially as there are regular consultations with a new users committee and documents on the management are published. Yet, it should be pointed out that not all information is publicly available, for example some reports on the pricing.<sup>34</sup> Despite these limitations, the remunicipalisation in Grenoble has set an example for other struggles for the social appropriation of water around the globe.

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<sup>25</sup> (Lobina 2006: 8).

<sup>26</sup> (Hall/Lobina 2001: 8-9).

<sup>27</sup> ((Stürmer 2006: 36).

<sup>28</sup> To this date Avrillier was a member of the city council for the green party.

<sup>29</sup> (Lobina 2006: 18-19).

<sup>30</sup> (Pflieger 2003: 341-342).

<sup>31</sup> The new legal status is "*régie à autonomie financière et personnalité morale*". It secures the company a small amount of autonomy from the council. For details about this legal status and for the reasons, why Grenoble chose it, see (Lobina 2006: 19-20).

<sup>32</sup> (ibid.: 22-23).

<sup>33</sup> (ibid.: 20).

<sup>34</sup> (ibid.: 21).

## 5 Conclusions

Looking at the international experiences of conflicts over water supplies we can see that not only privatisations can be prevented, but also processes of social appropriation of privatised water can be successful initiated and implemented. The ways, strategies and results of these processes are highly depending on the local circumstances and social forces. Thus, there is not a ready-made strategy of social appropriation of water that can be transferred and applied one-to-one in other places. But nonetheless, the deeper analysis of the cases Potsdam and Grenoble revealed a number of aspects that could be interesting also in other places.

The experience of Potsdam shows that a city can successfully throw out a private investor, although complex and elaborate contracts seem to impede this. And the case underlines that a city must be willing to take up a confrontational stance: Only when the city started to act consistently and avouch its interests, the dynamics of remunicipalisation were launched. To do so, the city first had to acquire the knowledge about the details of the privatisation contracts and about the sticking points of the management and formed a special task force including external expertise. It was crucial for the success of the confrontation with the private investor, that the city has strengthened its autonomous basis of information through a process of re-appropriation of knowledge. But the case of Potsdam also shows significant weaknesses. Citizens and water users were only passively involved in the conflict. The remunicipalisation was prepared and enforced only by a small and not publicly acting group, composed of a few representatives of the city government, the managing director dispatched by city and of external consultants. This group was successful in catching Eurawasser by surprise and in remunicipalising the company. But the structure of the water company was only changed a little. In consequence the influence of citizens and users is still extremely low, and the commercialisation of the water and sewage services is unbroken.

In Grenoble, where the remunicipalisation was a public process in which citizens movements had taken a leading role, the opportunity was also used for a democratisation and a realignment of the company. The consequent critical monitoring by citizens during the entire privatisation process has assembled knowledge about the functioning of the company and possible alternatives, which now are partially applied by the new remunicipalised and democratised company. The most obvious expression of this development is the fact that important opponents of the privatisation are now included in the board. Thus in contrast to Potsdam the process of social appropriation of the ownership over the means of production has been linked to a process of social appropriation of the control over these means of production.

International experiences in the last years showed impressively that struggles for remunicipalisation of water can be won, even in situations where citizens seems to be subjected to the interests of private investors through long-term contracts. If remunicipalisations should not only lead to change of ownership, but also to the abandonment of profit seeking and to the implementation of a new social and sustainable way of handling water, then social movements and the issue of fundamental democratisation will have to play a crucial role.

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