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The Berlin Water Works: From commercialisation and partial privatisation to public democratic water enterprise

With a preface by

Sahra Wagenknecht, Berlin

The Berlin Water Works

*„Any abuse of economic power is illegal. In particular all monopoly organisations aimed at the domination of production and market constitute an abuse of economic power and are forbidden.”
(Article 24 of the Berlin Constitution)*

For over a decade, rude and ruthless liberalisation has been taking place in Europe. Elementary services like energy supply, large parts of transport, but also education, apartments and hospitals are being transferred to the rules of the game of market and profit; partly directly under the aegis of Brussels liberalisation directives, partly under the pressure of judgements of the European Court of Law, partly also upon individual initiative of neoliberal governments.

The water sector belongs among those where up to now there has not yet been any explicit liberalisation directive from Brussels. Correspondingly larger is the pressure to catch up with that. After all, seven of the world's ten largest water companies come from France, Germany, and Great Britain. And the business with the elementary good water is highly profitable. Of course, following European law, also in the wake of sector-specific liberalisation prescriptions – as they exist in the sector of energy, telecommunication, or Deutsche Bahn – there is no duty to privatise public tasks. But the opening of economic branches to competition in any case forces also public forms to behave like private firms. In most cases, the liberalisation of the markets is only the first step that draws a complete commercialisation and privatisation of public tasks in its wake.

In large areas of the European Union, however, water supply is already today subject to the profit principle. In Berlin, the water economy has already for seven years been dominated by private companies – even though they do not formally dispose of the majority of the shares. 49.9 percent of the Berlin water works in the year 1999 were sold, by the Grand Coalition of SPD and CDU were sold to the water multinationals RWE and Veolia.

As the study by Alexis Passadakis shows, the consequences of this commercialisation of the Berlin water works are catastrophic: Since 2004, water prices have risen by more than 20 percent and now count among the highest in the whole of Germany. In the interest of maximal profits, since 1999, almost 2000 jobs

have been cut at the water works and numerous regularly paid jobs were replaced by hired workers. Also the argument that privatisations can make a contribution to budget consolidation turns out to be a neoliberal fairy-tale. Because in order to pay the private companies RWE and Veolia the guaranteed yield, the country of Berlin over decades needs to renounce to high revenues.

It is therefore high time to think how the partial privatisation of the water works can be retracted and the water supply of the Berlin population can be subjected to democratic control. This end is also served by the present study that will hopefully contribute to a productive discussion of strategies of re-communalisation.

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Introduction

For the Berlin population in contrast to many people in this world running water in every household is natural. Clean water is available in any quantity and in good quality. Nonetheless, Berlin water policy is a hotly disputed terrain. Because despite this naturalness of a secure water supply, there have been, in the last years, deep cuts in the way of production of the service water supply: The Berlin Water Works (BWB) were commercialised and privatised. From a democratic and social perspective, commercialisation and partial privatisation of the Berlin Water Works of 1999 were a disaster. From the point of view of the private shareholders RWE and Veolia a good business with gushing profits.

The sale of 49.9% of the BWB to the multinational company Veolia (Paris) and the energy supplier RWE (Essen) was the result of the partial privatisation under the coalition government of SPD and CDU. The remaining shares stayed in the hands of the country of Berlin. Despite the majority of shares, it is not the public authority, in this case the Senate administration for economy that determines the fate of the Berlin water company. Instead, following the pattern of the Berlin Bank society, there was invented an extraordinarily complicated construction that leaves the control of the BWB completely to the managers of RWE and Veolia. Already before the partial sale of the BWB, there began their commercialisation, meaning their increasing orientation towards profit. The Berlin enterprise law (see chapter 2.2) prepared among other things the terrain for an international expansion of the BWB.

The opponents of privatisation and of sale criticised the absence of democratic principles and the secrecy of the privatisation process¹, the loss of jobs at the BWB and the local supplier industry, a massive reduction in investment and a sneaking

¹ As the journalist Jörn Böwe had to hear, a look at the treaties is not possible; his application to have a look at them was refused by the Senate administration for finances in the year 2005. This was justified with the argument that the private companies might suffer “economic disadvantages” by the disclosure. Which ones these are, precisely, can hardly be guessed for a company in a monopoly position.

pressure to neglect ecological aspects. The main focus of criticism, however, is the contractually stipulated de facto yield guarantee (see Chapter 2.1) in favour of the two transnational companies that lead to higher water prices and reduced earnings for the country of Berlin. Due to the yield guarantee, RWE and Veolia between 2000 and 2005 were able to pull in 495 mln. Euros in profits, while the country of Berlin had to be satisfied with 171 mln. Euros.²

In the light of such numbers, the main argument for privatisation back then, namely the necessity of budgetary consolidation, turned out very questionable. In fact, the debate about the privatisation of the BWB began already in 1990 and that way long before the sharpening of the Berlin budgetary crisis. The argument of the budgetary crisis was used strategically to de-legitimize the resistance of privatisation sceptics: “There is no alternative!” The crisis of public budgets in Berlin and elsewhere is used to bring about a change from (local, municipal) state holdings that open public property (apartments, public transport, city works, hospitals etc.) increasingly to private profit interests. This is often linked with the assertion of a basic superiority of the private economy as far as efficiency is concerned.

The privatisation dynamic maybe continues to progress, however, not unbrokenly. Precisely in the water sector, privatisation by way of transnational companies in many cities hits upon protest of the population – world-wide. Be it in Cochabamba in Bolivia where the US corporation Bechtel had to leave the city, or in Manila, the Philippines. In Germany, there have already been now 25 successful citizens’ petitions in order to prevent in advance the privatisation of the most important means of life, for instance in Dessau and Munich. In Berlin as well, the conscience for the situation of the (formerly) public services is getting ever greater: in spring, an anti-privatisation alliance³ was founded in Berlin, and a short time later also the “Berlin water table”.⁴ The topic of a re-communalisation and a socio-ecological renewal and democratisation of the public service water supply is on the table, therefore.

1) The commercialisation and partial privatisation of the Berlin Water Works (BWB)

The authority – the federation, the federal country or municipalities – may, for the sake of fulfilling public tasks, use private legal organisational forms, such as the limited company or the stock company. “The reverse constellation”, writes the lawyer Jan Hecker, “a private person pursues certain goals in the cloak of public- legal organisational forms – is unusual, however [...]” (Hecker 2001: 261). In the unusual case of the Berlin Water Works, a public firm is manipulated in order to realise the profits of two transnational companies.

1.1 A public company as the instrument of the private sector – the holding model

In fact, the partial privatisation of the BWB as institution of public law, the largest German water and sewage water disposal agent, is considered the up to now most

² Data following calculations by the ZDF magazine „Panorama“.

³ Information on the Berlin alliance against privatisation under: www.bmgev.de/privatisierung/index.html.

⁴ Information on the „Berlin water table“ can be found under www.berliner-wassertisch.net.

complicated privatisation case in the water sector in Germany. The core of the Berlin privatisation model is the maintenance of the institution of public law and simultaneous control by private companies. To choose this construction had one reason: to save taxes. Because with the status of the BWB as public legal water enterprise, tax compensations are linked that would not accrue to a purely privately organised company such as an Inc. For sewage water purposes, public firms are not tax liable.

The involvement of companies in the public-legal Berlin Water Works took place with the help of a complicated network of private legal contracts at whose centre there stands a stock-holding company held in common by the institutional owner, the country and the two companies: the Berlinwater Holding Inc. In it, the country participates with 50.1%; RWE and Veolia, by way of a common consortium – the BWB participation stock-holding company (BB Inc.)⁵ – with 49.9% (24.95% each). Originally, the Alliance Capital Partners still held a couple of shares; however, it had sold them in 2002 in equal shares to RWE and Veolia.

The Berlin Water Works (ipc) themselves, however, stayed to 50.1% in the property of the country of Berlin; the remaining 49.9% are held by an atypical “silent partnership”⁶ (“silent partnership II”) by the common holding. The silent company in contrast to an immediate share-holding has the advantage that the payment of turnover, corporate and transport tax on the profits obtained can be evaded. An immediate shareholding would after all put into question the character of the ipc as a public enterprise and therefore also various tax models. This legal construction is, therefore, a tax-saving model.

This silent partnership is “atypical”, however, insofar as entrepreneurial rights are anchored in it that go beyond the usual concept of the silent partnership. At the same time, the holding by way of a contract over a unified management (the so-called “power contract”), secures itself access to the BWB. The holding thus disposes of a right of command with respect to the BWB. The exercise of the right to advice may only be exercised with the approval of a committee of the executive board of the holding (instructing committee), where the members sent by the country of Berlin have the majority. The purpose of the instructing committee is – as demanded in the Basic Law, Article 20, Paragraph 2 – to establish an uninterrupted chain of democratic legitimacy from the sovereign, that means the citizens, by way of the parliament and the country governments up to the public companies, in this case an ipc. In fact, this committee has never met since 1999. It simply purely formally simulates democratic legitimacy.

An additional atypical silent partnership (“silent partnership I”) in between the Shareholding Inc. of the two companies and the Berlinwater Holding holds 100% of the shares of the Silent partnership II. With this construction, the share-holding consortium of RWE and Veolia by way of the holding seizes on the Berlin Water Works and that way can participate to up to 49.9% - meaning with respect to the

⁵ The original name, BWB participation Inc. (BB Inc.) was in the meantime changed to RWE/Veolia Berlinwater Participation Inc (RVB).

⁶ “The rights of the silent partner limit themselves to profit sharing and the control of the annual balance sheet by insight into the books and receipts.” (Teisman/Birker: 331).

share-holding relationships in the overall holding over quota – in the BWB. That means that 100% of the profit that flows from the BWB to the holding (49.9% of the overall profit of the BWB) benefits RWE and Veolia (Ochmann 2005: 42). The staffing of the executive board is regulated by the additional contract between country and holding, the interest guarding contract.

This complex construction means that the Berlinwater Holding Inc. as leading holding steers and controls all activities of the enterprise of the Berlinwater Group that next to the BWB also includes the Berlinwater International Inc., the Berlinwater Services Inc, the BerliCom Telecommunications Company Ltd. and additional firms and share-holdings. Between the country of Berlin and the consortium partners RWE and Veolia, the contract fixed that the operative guidance of BWB and holding should be transferred to the two corporations. The post of chairman of the board of the BWB is taken over by Veolia and the presidency of the board of the holding by an RWE manager. This agreement was laid down in a consortium treaty which as a framework treaty includes all already mentioned contracts as appendices. Despite the Berlin law on informational liberty, the consortium treaty is subject to secrecy and is thus not open to public scrutiny. Nevertheless, essential provisions of the treaty have one after the other been brought to light by various publications of the chamber of deputies (Berlin Chamber of Deputies 1999a and 1999b), by the fusion-control decision of the EU Commission, by press declarations of the holding and the responsible Senate administration that press and other channels have brought to daylight.

The involved legal construction is based on the partial privatisation law 1999 that after an examination by the Berlin Regional Constitutional Court was held essentially to be in conformity with the constitution.⁷ Despite the judgement of the Constitutional Court, there are massive doubts in the legal profession about the constitutionality of this construction (Lederer 2004: 359). The legal scientist Daniela Ochmann declares the holding model and that way the privatisation contract (!) in her dissertation only published recently to be clearly in violation with the Berlin constitution, because it was simply not compatible with the democracy requirement (Ochmann 2005: 166): “The holding model for the partial privatisation of the BWB due to the influence of the institutional property holder, the city, being too weak, infringes against the principle of democracy, art. 20, paragraph 2 BL. In particular, the instructing committee does not offer any guarantee of democratic legitimacy.” And: “The public authority may not, by way of contractual provisions, hand over its institutions into the hand of private agents. Such contracts are nil due to the infringement against the principle of democracy, Article 20, paragraph 2 BL.” Added to that is that the European cartel agency that examined the partial privatisation, only agreed to it explicitly, because the country of Berlin no longer has any power of disposal over the BWB.

The essence of the intricate legal model is that a public-legal company was placed under the control of two private corporations – hidden by a cracking façade of legal legitimacy. Without this construction for tax evasion, the increases in the water price would have become so high that a (partial) privatisation would have been much harder to get through. Moreover, the employees could have defended themselves

⁷ Compare Berlin Chamber of Deputies (1999c). During the examination, only two – portentous clauses, however – were refuted that concerned the price calculations. Compare also chapter 2.1.

under the labour code against a switch to a non-public enterprise form such as an plc or inc.

RWE

The company RWE located in Essen is the market leader in the German water economy.⁸ In the FRG, already 11 percent of the population are supplied by RWE (or respectively enterprises where RWE is participating). World-wide, RWE – by way of its daughter Thames Water – participates directly in water supply in over 20 countries and supplies about 70 mln. people, among other places in Egypt, Australia, Chile, Indonesia, Thailand and the USA. With hundreds of daughter firms, the RWE company is on place 43 of the largest companies of the world; in Germany, it is on place 6. World-wide 132,000 people work for RWE and produce a turnover of 46 billion Euros. At the same time, RWE is indebted with more than 20 billion Euros and is therefore under high pressure to earn sufficient profits. As goal of the firm, enterprise chief Roels has given out the slogan of a yield on capital of 14 percent.⁹

To whom does RWE belong? In the year 1997, the Nordrhein-Westphalian communities by way of tax reform lost the majority in the company. Nonetheless, they continue to represent the largest block of stockholders (at this point ca. 36 percent of shares). Moreover, at the end of 2002, the alliance held 7.55 percent of the stocks and 5.8 percent were in the property of the Munich Reassurance. Together with the Regional Bank WestLB, RWE is one of the political and economic power centres of Nordrhein-Westphalia.

At the end of the 90s, RWE developed its multi-utility strategy, meaning the net-bound supply with electricity, gas, and water was supposed to be offered from one hand. An important reason for this orientation was the liberalisation of the electricity market, which is why RWE counted on a higher competitive pressure. The transnationalisation of the company from Ruhr and Rhein was accelerated that way.

The participation in the Berlin water works was a strategic move for RWE; that way, the company wanted to prove its capacity to manage water supply firms of this magnitude. One year after the partial privatisation of the BWB, RWE was also able to acquire the transnational water supplier Thames Water headquartered in London. In 2001, the large US water supplier American Water Works was taken over, with effect on May 1, 2002; the RWE Aqua Ltd. bought the majority of the Rhenanian-Westphalian water works (RWW) with 74.9% and that way the predominant position

⁸ The second-largest private water company in Germany is Gelsenwasser (an EOn daughter) that supplies approximately 4 million people and beyond that is active in Eastern Europe by way of participations (www.gelsenwasser.de). In the private water economy in Germany and by way of water services in additional countries Aquamundo (www.aquamundo.com) is also involved as the third-largest company.

⁹ The former Shell manager Roels has been quite “successful” in strengthening the value of the enterprise. In between the end of 2002 and July 2005, the stock value of RWE jumped to 55 Euros. The reason for that was the sale of daughter firms (Heidelberg printing machines, building company Hochtief) and the destruction of 5800 jobs in the core business. Roels also profits of that itself. RWE offered the top managers in 2003 and 2004 stock market options and promised a guaranteed gain if the stock values were to double. After the destruction of jobs and the increase in stock market values in July 2005, Roels sold the options and cashed in almost 5.1 million €s at one go – in addition to his yearly basic income of ca. 4 million €s.

on the Nordrhein-Westphalian water market.

The interests of the RWE companies within the Berlin water holding company were not immediately represented from the Essen headquarters, but by way of Thames Water out of London.

RWE/Thames Water

The RWE daughter Thames Water (www.rwethameswater.com), with an annual turnover of 4.7 bln. Euros, controls the water activities of the Essen company – in 70 countries with about 17,000 employees. Thames Water is infamous for its environmental crimes: in London, due to leaking tubes, about a third of drinking water seeps away. From 1999 to 2002 alone, Thames Water in over 20 cases in England and Wales was condemned for environmental damage to over 450,000 £ of fines – RWE/Thames Water that way in Great Britain stands on Place 1 in the ranking of environmental criminals.

One example for the international activities of the RWE daughter Thames Water is water supply in Indonesia. In the year 1995, there began negotiations between Thames Water and the former Indonesian dictator Suharto with the goal of taking over, together with the French corporation Suez, water supply in the capital and in the mega-metropolis Jakarta. Because the laws back then did not admit any participation of foreign firms in the water supply, Suharto in July 1996 had simply put this law out of force. Then, in 1997, the privatisation was decided, and the son of the dictator, Sigit Suharto, was offered a fat participation in the new society: a case of corruption that was not worked up before court to this day. In 1998, there followed the fall of Suharto, the contracts with Thames Water were annulled, but a little time later, renegotiated again.

Today, Suez and Thames Water are still the private monopoly water suppliers in Jakarta. The consequences for the population are fatal: grave pollution, for instance with heavy metals and cleaning materials, just as the burdening by a extortionist contract that stipulates that in the case of premature ending of the contract all investments must be paid back to the investor (RWE-Thames Water may keep the revenues) and that the guaranteed future profits for the whole running time of the contract need to be paid back to the company. In the year 2003, even the British ambassador was notified to push through an additional increase in the water price with the government. In the beginning of 2004, the fees were increased by an additional 30%.

Veolia

In the year 2003, Veolia Environment with a net profit of 12.2 bln. US \$ was the water company with the strongest turn-over world-wide. This company was issued from the enterprise Vivendi Environment belonging to Vivendi Universal. The separation of the environmental branch from the mother company and its sale to a consortium of French large-scale investors was a consequence of the failed mixed company and 'new economy' strategy of the 90s. Because in order to be able to save the company, Vivendi Universal, and to be able to maintain nevertheless the entertainment and communication branch as the new core branch, next to the publishing business, the supply branch 'environment' was also cast off. Vivendi Universal and now Veolia as well belong to the French firms that are considered 'national champions' by the

government and that way get to benefit from voluminous promotional means and political support. That is also the reason why Veolia was sold to an alliance of state (Électricité de France) and partly state corporations (BNP Paribas, Crédit Lyonnais, Crédit Agricole and Société Générale) and not to foreign private investors. After all, also RWE had shown interest in Veolia. An intervention by the French presidential office, however, prevented this sale. In the meantime, Veolia supplies 110 mln. people in 90 countries.

The Berlin Water Group

The Berlin Water Group today next to the BWB includes a whole series of daughter firms that following the difficulties of the BWB, or respectively the Berlinwater Holding, in the waste disposal and communication sector, are now mainly active in the water sector. On its website, Berlinwater underscored in the year 2004 that the holding was going to concentrate on its “core business, namely water and waste water disposal in Berlin and all water services such as drinking water production, rehabilitation of wells, engineering services as well as financial and technical consulting” (compare www.berlinwasser.de). The most important daughter society of the holding is the Berlinwater International Ltd. that conducts the international water business. Its activities – concessions, *build-operate transfer* (BOT) and consulting, with almost 3 mln. consumers – concentrate on Asia and Mid- and Central Europe.

1.2 Commercialisation, internationalisation and (partial) privatisation of the BWB, 1990-1999

A few days after the elections to the 14th chamber of deputies, on October 29, 1999, the “old” plenary of the 13th legislative period reunited for a last time for an extraordinary session called on short notice. By way of the majority of the CDU-SPD coalition, there was decided in a formal way the partial privatisation of the Berlin Water Works (BWB). Still on the same day, the finance senator back then, Fugmann-Heesing (SPD), rushed to sign the consortium treaty that sealed the partial privatisation of the Berlinwater Holding Ltd.¹⁰ with the companies RWE Aqua Ltd.,¹¹ Vivendi Environment¹² and Alliance Capital Partners.¹³ The senate and the speakers of the companies concerned celebrated the sale of 49.9% of the Berlin Water Works for 3.3 bln. DM (1.69 bln. €s) as “pilot project for Germany” and as “growth engine” for Berlin’s economy. Since then, the first- and the third-largest of the multinational water companies have been playing a decisive role in Berlin’s water economy and that way also in Berlin’s water policy.

¹⁰ In the course of partial privatisation, the Berlin Water Works (BWB) was brought into the newly founded Berlinwater Holding Ltd. I therefore generally use for the Berlin water works – both for the phase before as well as after the partial sale – the name Berlin Water Works or BWB, even if the Berlin Water Works are only part of the overall company. Only if reference is made explicitly to the holding, I talk about the Berlinwater Holding Ltd.

¹¹ The RWE Aqua Ltd. is a daughter company of the RWE group (Rheinisch-Westphalian electricity works) with main headquarters in Essen. In the meantime, the water branch is controlled by RWE/Thames Water headquartered in London.

¹² Vivendi Environment was a daughter company of the Vivendi company headquartered in Paris (until 1998 Générales des Eaux). In the year 2002, Vivendi cast off the water branch that since then is known under the name of Vivendi. In this text, there is used for the time before 2002 the name Vivendi – after 2002, the new name Veolia.

¹³ Alliance Capital Partners belongs to the financial company Alliance Group with seat in Munich.

The partial sale, however, was not the only change that the BWB – the largest German water supply company – suffered in the 90s. A decisive step in Berlin water policy took place even before partial privatisation, when – by way of the new Berlin enterprise law –, the BWB on January 1, 1994 was transformed from a municipal enterprise into an institution of public law (ipc). With this changing of legal form, the senate of the first grand coalition¹⁴ laid the foundation for the economic expansion of the company, by creating among others the possibility for acquisition or for the foundation of daughter companies at the national and the international level. The decision for founding an institution of public law (a public legal form, however, leaning on the German stock-company law) was a compromise model that also came into being as a result of great social pressure. After all, already as a result of the debates conducted since 1990 about the attachment of the East-Berlin water works to their West-Berlin counterpart, voices made themselves heard in CDU and SPD that propagated a private stockholding company instead of a municipal enterprise. Since then, the discussion around structural changes at the Berlin water works was accompanied by social and political confrontations (Köpke/Öttl o.J.).

From municipal enterprise to institutions of public law – commercialisation and internationalisation of the BWB

Since about summer 1991 the party heads of both CDU with their fraction presidents Klaus-Rüdiger Landowsky as well as those of the SPD with their fraction head Dietmar Staffelt began to aggressively promote privatisation as the central “technique” of good government. The BWB was not exempt from this basic orientation. Budgetary questions did not play a role in this debate about privatisation; in the foreground, there stood the argument of efficient and competent enterprise leadership.

In the course of the year 1992, intensive talks were conducted between the trade union Public Services, Services and Transport (German abbr. ÖTV) and the fractions in the Chamber of Deputies. The SPD leadership and in particular Dietmar Staffelt defended the position that the BWB was supposed to be converted into a stockholding company. Trade unions and personnel councillors held against it with the concept of a “modernisation of the municipal law”. The ÖTV assumed that a change in legal form would have negative effects on the collective agreements, company old-age insurance, protection against dismissal, and co-determination within the enterprise. At the same time, the employees of the Berlin municipal enterprises by way of supplemental collective agreements were equipped by a high level of social security for unified-German conditions. The conflict was led from the side of the trade unions and business councillors with high commitment and great mobilisation of the employees of the different municipal enterprises. In that context, there belonged a demonstration with several thousand participants before an SPD regional party congress, and in course of the year 1993, the announcement of ca. 30,000 employees that they refused the transfer of their working situation, in case the municipal enterprises BVG, BSR, BWB and Behala were converted into an ltd. or plc (inc.). By way of these means of pressure, the trade unions and the business

¹⁴ The first grand coalition in Berlin ruled from the beginning of the year 1991 until the end of 1995, the second from the beginning of 1996 until the end of 1999. The third grand coalition that was in office since beginning 2000, in light of the scandal around the Berlin Banking Society came to an early finish at the end of 2001.

councillors managed to block a privatisation option.

After considerable negotiations, CDU fraction head Landowsky succeeded to work out a compromise between the representatives of the employed and the advocates of privatisation. As a result of these conversations, there was passed in June 1993, the Berlin business law that sealed the transformation of the Berlin municipal enterprises into institutions of public law (Berlin Chamber of Deputies 1993c; ÖTV Berlin/DAG 1999). The work and social policy core demands of the business councillors had been fulfilled, and that way, beginning on January 1, 1994, four Berlin municipal enterprises were transformed into ipcs: the Behala, the BSR (waste), the BVG (transport), and the BWB (water). Their institutional statute is aligned with that of German stock companies (wages?, co-determination?, C.K.).

That way, the party heads of the grand coalitions and the regional governments were not able to impose privatisation immediately, but they succeeded nonetheless to restructure a public service enterprise in such a way that commercial (and international) activities became possible and additional future steps towards privatisation needed to take fewer hurdles. By way of the new legal form, it had become possible for the new BWB executive to introduce an intensive acquisition policy. Moreover, the water prices after that time rose massively in several steps so as to be able to finance the implementation of the new company strategy.

The new company fields developed slowly in the first couple of years. At first, the international activities of the new BWB ipc were limited to consulting tasks in Mid- and Central Europe, Asia and Latin America. Starting in 1997, the BWB began with the acquisition of participations, for instance, in the water works in Budapest (Hungary), Hodmészövásrhely (Hungary) and Xian (China).¹⁵

In the case of several acquisitions at the national level that became possible by way of the new reform, Dietmar Staffelt – SPD fraction head from 1989 to 1994 and an essential engine in the creation of the ipc, as well as starting in 1997, chairman of the committee for economics and enterprise of the chamber of deputies, together with a group of CDU politicians played an important role at the head of the finance administration and of the BWB. In April 1997, the Barings Bank organised the sale of the Essen machine building company Saarberg Hölter Water Technology Ltd. (SHW) for an amount of 146 mln. DM to the BWB. This firm was the daughter firm of the transnational company Australian National Industries that already had been looking for a long time for a buyer for this enterprise in an extremely bad situation. In spite of various warning voices that pointed to the discrepancy between the high turnover and profits on the one hand and the number of orders in the sales records of the Barings Bank on the other hand, the investment was made upon urging of economic

¹⁵ The BWB together with the Xian water works and a financing company from Hong Kong signed a contract about the construction and operation of the water works “Xian South”. After a three-year construction period, the installation started to run on November 9, 2001. In 2002, the Chinese government per decree prohibited contractual provisions mandating yield guarantees for transnational companies. That way the legal basis for the contract between Xian and Berlinwater International plc dropped out. The latter, in December 2003, sold back its shares to the Xian water works. The Chinese government had apparently learned from international experiences.

senator Elmar Pieroth (CDU)¹⁶, his state secretary Dieter Ernst¹⁷ and the BWB executive head Wieczorek. However, the SHW was not a good deal. Even if it did not go bankrupt, it never made the prognosticated annual profit of 14 to 15 mln. DM. The records of the Barings Bank, moreover, still showed yet further incongruence: The graph of the enterprise structure with the title “Simplified ownership and social structure of the SHW group” was also proposed to the executive of the BWB; however, precisely this heading was missing there, so that the graph seemed to represent the complete data on ownership (Rose 2004: 82). That way, there were missing the decisive mother societies of the SHW, the HUB Hölter Industrial Shareholding Ltd. and the Hölter-ABT Ltd. In these two societies of the Australian company, Staffelt was main executive. Already from 1983 until 1989, he had worked there as a leading employee, and in 1995, in parallel to his political commitment in Berlin, returned there as member of the executive and executive chairman of at least five firms of the Hölter group. At the Hölter firm Boran floor-cleaning Ltd., located in the Berlin West harbour, Staffelt became executive in the beginning of 1997. Even though technical deficiencies were noticed in the floor-cleaning installation, it was bought in mid-1997 together by the BWB and the Berlin city-cleaning works. Senator Pieroth’s state secretary Ernst had energetically supported this purchase (Rose 2004: 84). After only four months of unsuccessful tests, the installation was taken out of service (Tiede/Rose 2001).

The sales process

In the mid-90s, Berlin’s political landscape began to change drastically. On the one hand, the elections to the Berlin Chamber of Deputies of October 1995 brought its worst result of the post-war period to the SPD. An essential reason for the SPD’s defeat was the shrinking of its traditional standing voters, industrial workers, as a result of the progressive de-industrialisation of the city. Secondly, in the same year, the debts of the city reached a level of 23.7 bln. Euro and were for the first time broadly discussed in the political public. As a reaction to the electoral defeat, the right-wing social-democratic Britz circle was for the first time able to impose itself programmatically and to swear in the party on a clear political course with its stand on budgetary consolidation. In this context, the fraction chairman Böger succeeded in placing the former Hessian, strictly monetaristically inclined financial senator, Annette Fugmann-Heesing (SPD) at the top of the Berlin financial administration. This sealed the reorientation of the party. In the following months, the CDU-SPD coalition forced the discussion about the sale of public service firms.

Transnational companies become active

Already in December 1996, the Senate administration for finance had begun in silence to pick up sales negotiations with the French company Crédit Lonnais des Eaux (today: Suez). When these became public in May 1997, the starting shot was given for conflicts over the privatisation of BWB that were only to come to a preliminary end in October 1997.

¹⁶ Elmar Pieroth was, during the first grand coalition, finance, during the second grand coalition economic senator. He is the owner of one of the largest wine-trading companies in the Federal Republic.

¹⁷ Dieter Ernst, from 1993 until 1996, acted as general secretary of the CDU. Subsequently, from 1996-1999, he was state secretary in the senate economic administration. After the partial privatisation of the BWB, he was called in 1999 into the executive of the Berlinwater International plc.

In mid-1997, RWE stepped on the stage of Berlin water policy: On June 13, the RWE Disposal plc submitted to the Berlin consulting firm Pröpper a contract proposal for a comprehensive examination of the privatisation of BWB and BSR. The owner of this consulting firm, the former head mayor of the city of Lemgo, Franz-Josef Pröpper, was at the same time director of the Berlin dependency of the consulting firm West German Communal Consult Ltd. (WestKC), a hundred percent daughter firm of the WestLB, the Nordrhein-Westphalian regional bank. It is intertwined closely both personally as well as on the level of business relations with RWE.¹⁸

In his partial study for a privatisation strategy for the BWB, Franz-Josef Pröpper pointed to the fact that a construction was conceivable that would incorporate a plc into a holding stockholding company and would guarantee at the same time “the rights and the possibilities of private investors” (Enterprise Consulting Pröpper (1997a)). At the same time, Pröpper advised RWE to keep in the background in the discussion of privatisation.

After the public debate had picked up in the course of the year 1997, the following conflict lines sketched themselves: The neoliberal wing of the SPD advocated a complete privatisation of the BWB, while the social-democratic wing of the party refused any privatisation at all. In the CDU, there did not take place any conflicts over the “why” of a privatisation, but on its leading floors only a debate about different models; the opposition parties pronounced themselves against privatisation of the water works, and the trade unions mobilised mainly against a full privatisation by means of a stockholding society or a concession that would also have touched directly on the employment situation.

Trade unions turn up the pressure

On August 13, 1997, more than 4,000 employees and workers of the BWB, at an extraordinary personnel meeting, demonstrated against the plans of the Senate of converting the BWB into a stock-holding society. The way from the BWB main administration to the assembly hall was used by the employees and workers for a car procession of 250 BWB vehicles. BSR personnel had also joined the demonstration with many vehicles. A couple of months before, this had been preceded by a solidarity agreement among the personnel councillors of the municipal enterprises to resist the threatening privatisation of their enterprise in common. Moreover, the business councillors in collaboration with the ÖTV in the following couple of months developed several alternative models that were supposed to guarantee the existence of the water works as ipc. All these models were rejected, however, by the governmental coalition and the senate administration. Only when the business councillors again threatened to strike, offers to negotiate were again made by the Senate.

The tensions were large not only in between trade unions and Senate but just as vehement within the SPD. Fugmann-Heesing and Böger wanted to use a party

¹⁸ Friedel Neuber, the executive chairman of the WestLB (1981-2001) was at the same time executive chairman of RWE (1997 to 2004). As an SPD member, former SPD deputy and intimate of Johannes Rau, Neuber played a decisive role in the relationship between the social-democratic party, the public credit system and large companies with their headquarters in Nordrhein-Westphalia. Also after Neuber's death in October 2004, the WestLB supplied the executive chairman of RWE. The office is held by its executive chairman Thomas Fischer.

congress in August 1997 to get their privatisation policy approved by the basis. However, they were not able to get through with that; therefore, a vote on the privatisation of the BWB needed to be postponed. However, a newly-to-be-created working group “wealth activation” (SPD 1997)¹⁹ was supposed to work out, until the next regional party congress in November of the same year, a concept that was supposed to clarify the question of the contribution of municipal governments (and all other form of regional wealth) to the solution of the budgetary crisis. In the light of these controversies, there showed itself early enough that a full-scale privatisation could not be pushed through. Therefore, the Senate administration for finances on October 7, 1997 charged the enterprise councillor Pröpfer that only a few months before had designed the privatisation strategy for the RWE, to now develop a concrete privatisation concept. In the beginning of November, the Senate administration for finances received an intermediate report of the expert evaluation.²⁰ The many 100 side strong paper turned against full privatisation. That way, there could be submitted at a decisive place in the financial administration a model that foresaw the maintenance of the ipc in combination with public participation and corresponded to the interest of one of the candidates – namely that of RWE that in contrast to Suez did not offensively advertise for full privatisation.

The pushing through of the holding model

When a full privatisation following the agent or plc model due to the controversies within the SPD and the resistance of the trade unions remained impossible, work began in spring 1998 on fine-tuning the holding model on the basis of Pröpfer’s evaluation. An important role in that was played by the lawyer Benedikt Wolfers from the chancellery Bruckhaus Westrick Heller Löber that had also contributed in developing the intricate construction of the Berlin Bank Society.²¹

In the meantime the ÖTV continued to enlist approval for an alternative model of the Berlin Water Works. In the beginning of June 1998, the ÖTV received a brief expertise which examined its trade union model concerning its feasibility. The expert was the consulting firm WestKC that received the contract on May 27, 1998 by the ÖTV. The paper (WestKC 1998) was done by the head of the Berlin WestKC branch – Franz-Josef Pröpfer. Pröpfer sharply criticised the trade union model and presented calculations to the effect that it would contribute only about 1 bln. € to the regional budget. Instead, he pleaded for a partial privatisation by way of the holding model he had co-developed in the meantime.

After the holding model had become known in June, the intensity of the conversations between the business councillors on the one hand and the economic administration, finance administration and the fraction heads of the grand coalition on the other side grew yet further. The business councillors of the BWB claimed their co-

¹⁹ The working group “wealth activation“ was composed of Klaus-Uwe Benneter, Klaus Böger, Hermann Borghorst, Thomas Gaudszun, Rudolf Hartung, Elga Kampfenkel, Jürgen Kriebel, Rudolf Kujath, Petra Merkel, Hans-Peter Seitz, Dietmar Staffelt and – last but not least – Klaus Wowereit.

²⁰ The final document (Consulting firm Pröpfer (1997b)) was handed in still in the course of the same month.

²¹ In the meantime, this international law firm goes by the name Freshfields Bruckhaus Deringer (www.freshfieldsbruckhausderinger.com) that still advises the Senate today. On the role of Freshfields in Berlin, also Ugarte Chacón (2006).

determination rights. Moreover, they aimed at undercutting business-related dismissals for as long as possible. The CDU fraction, in particular its president Landowsky, showed the greatest possible readiness to meet the business councillors half way and to guarantee the interests of the workers and employees in the form of a collective agreement. The main negotiator on the trade union side was the CDU member Norbert Öttl, head of the general enterprise council of the BWB.

Public offer, contract negotiations and execution

At the end of August 1998, the Senate gave the transnational consulting firm Merrill Lynch the order to introduce the sale of 49.9% of the BWB on the basis of the holding model. In parallel to the offer procedure, there began the elaboration of the partial privatisation law. Economic senator Branoner (CDU) gave the order for elaborating this piece to the cabinet Finkelburg&Clemm.²² The owner of this law firm is Prof. Dr. Finkelburg, an influential CDU member.²³ It should still last, however, until June 7 until the senate communicated that the supplement would go to the RWE/Vivendi/Alliance Consortium. However, before the partial privatisation could be carried out, the opposition consisting of PDS and Alliance90/The Greens started a law control procedure against the partial privatisation law. The regional constitutional court in its judgment of October 22, 1999 considered it as essentially in conformity with the constitution (see chapter 1) – the president of the Regional Constitutional Court by the way was called Finkelburg, co-owner of the law firm that had worked out the law. Finally, on October 29, 1999 in an extraordinary session of the Chamber of deputies, the partial privatisation was decided with the votes of the ruling coalition majority. Back then opposition politician and today finance senator Harald Wolf (PDS) during the parliamentary debate of that issue commented the role of the legislature with the words: “I know we cannot debate for so long today, because the finance senator has a date for contract signing today at 11:30.” (Kirsch 2006) Indeed, the signatures were put under the contract still on the same day, and on November 1, 1999, there took place the constituting sessions of BWB and Berlinwater Holding Inc. where the new executives were named.

The preceding paragraphs only traced very few stations and aspects of the privatisation process and were only able to introduce some of the main actors. The confrontations over the part privatisation were controversial, however, they did not go past the political institutions, the parties and the trade unions. The administration, the party leaderships and the two consortium partners in the phase of the offering procedure and the contractual negotiations following it, were keen on letting as little information as possible leak towards the outside. The middle- and long-term effects on the regional budget were known only to very few in the party leaderships.

²² The Berlin law firm Finkelburg&Clemm on January 1, 1999 merged with the international law firm Feddersen Laule Schertzberg&Ohle Hansen Ewerwahn. An additional fusion with the North American law firm White&Case LLP in the year 2000 led to the creation of the cabinet White& Case, Feddersen. Since January 1, 2004, all their offices have only functioned under the name White&Case. Residences exist in almost 40 cities in more than 20 countries. See: www.whitecase.de/html/c_history.html.

²³ Within the CDU, Finkelburg (member of the Chamber of Deputies from 1985-92) belongs to the ‘gang’ that in the course of the 60s issued from the RCDS at the Free University (Sontheimer/Vorfelder 1986: 150-51). Additional members of this group were/are: Jürgen Wohlrabe (ex-regional treasurer), Peter Kittelmann, Winfried Tromp, Klaus-Rüdiger Landowsky (ex-general secretary and ex-fraction chairman), Gero Pfennig, Peter Raue, Gerhard Kunz (ex-finance senator) and Eberhard Diepgen (ex-principal mayor).

The lawyer Hecker comes to the conclusion that the partial privatisation of the BWB must be “characterised as a process that took place largely in a legislative vacuum.” Instead, transnational companies and networks linked to them consisting of consultants, lawyers and top representatives of parties and administrations played a central role. This opaque intertwining of networks – even if only hinted at by examples in the text – points to the democracy deficits (not only) in Berlin. Under the current (regional-) policy structures, political rule essentially also works by way of corrupt practices – even if not necessarily in the judicial sense. There are reports of graft in connection with the (partial) privatisation, however, from various sources – they are not to be proven black-on-white, however. They are credible, however, because bribes are current international practice in the case of water privatisation. Yet, not only the dominance of companies such as RWE and Vivendi (Veolia), their advisors and a politician class inclined towards them on Berlin’s political stage, but also the breaking-apart of traditional social-democratic milieus, the weakening of the solidarity of the trade unions of public enterprises and lack of political participation of other (civil) society groups were conditions for the social and budgetary fiasco of the partial privatisation of the Berlin water works.

2) The consequences of commercialisation and privatisation

The partial privatisation of the Berlin Water Works had far-reaching consequences on social, ecological and urban development. Viewed from a democratic perspective, the long duration of the contract with the private water companies that limits the political scopes for action over decades – as long as it is not possible to unfold sufficient pressure to push through a re-communalisation of the BWB.

2.1 Rising prices for the population

The immediate consequence of commercialisation and partial privatisation for all citizens of Berlin is the rapid rise in water prices. Already in the phase of transition from BWB to an institution of public law, the prices rose dramatically. Although it is stipulated in the partial privatisation contract in the year 1999, that prices may not be raised until 2004, since then, however, they have been increased annually: until January 1, 2004, by a full 15%, in the year 2005 by 5.4%, and until the beginning of the year 2006 by 2.5% (Monstadt/Schlippenbach 2005). The water price thus has risen by almost 23% since 2004:

Increase of the waterprices of the BWB from 2004 to 2009 (in percent)

2004	2005	2006	2007	2008	2009	In total
15.3%	5.4%	2.5%*	2.5%*	2.5%*	2.5%*	Ca. 30%

* planned.

In the coming years, in steps of respectively 2.5% a price increase of 30 percent overall is supposed to be reached.

The former technical executive of the BWB and current leader of the public-private partnership research installation “Competence centre water Berlin” told in an interview that the prices between 2000 and 2004 did not cover costs (Pawlowski 2004) and should therefore rise. The reason for the price increases were the reduction of water consumption and risen energy costs. In particular, sinking consumption produced an increase in fixed costs – for instance for the maintenance

of the pipe systems. On average, every inhabitant of Berlin was using 117 litres of water per day (2005). For the year 2006, the BWB prognosticates a further reduction of consumption by one litre.

What Pawlowski did not mention was that RWE and Veolia have pushed through comprehensive cost saving programmes in the BWB. In a press declaration of May 25, 2005, the BWB praised itself that by way of “a strategic investment planning, with efficiency increase projects in all areas of the firm and by the joining in the collective agreement contract of the supply economy [...] a stringent cost reduction policy [is] realised.” The costs “that could be influenced by the enterprise at all” had been reduced until 2000 by 30 percent (!). For the coming five years, “optimisation programmes” were supposed to result in savings of 60 mln. Euros. The new “flexible” contract law will lower the wage volume of the employed by an additional 60 mln. Euros. In the light of these cost reductions, one might assume that water price would rather fall.

The former technical executive Pawlowski also did not mention that in the year 2001 and 2002, there had been “profit transfers” to RWE and Veolia, even though the BWB had not made any profit. In fact, the de facto existing yield guarantee is the reason for such price increases.

By the increase of prices of a (formerly) public service, the Berlin Water Works are not alone. At Gasag, the prices rose by 45 percent since their sale; in the year 2005, the prices were increased within the last 10 months by 19 percent. The social consequences of the ever further increasing costs for gas, electricity, and water are serious – all the more so, since the employees in Germany in the year 2005 alone had to accept wage reductions of 0.8% on average. For Berlin with its official unemployment quota of 17 percent, the trend of rising expenditures for basic services is particularly problematic. For small earners, unemployed people and Hartz IV recipients, moreover, it is ever more difficult to find cheap living quarters in spite of great vacancies. One reason for that are the constantly rising operating costs, into which there also flow the increased water prices.

2.2 Gushing profits for RWE and Veolia – guaranteed by contract

The character of water supply as net-bound monopoly guarantees a constant monetary influx to the local public firms. Therefore, the economic position of community-based water suppliers in Germany is generally stable and open to cross-financing of public tasks. For private firms, public water suppliers are very attractive for that reason. Nevertheless, it is customary in the area of private or public-private water economy to write down additional regulations that allow the companies to obtain a high yield.

By means of the complex holding structure, the institution of public law BWB was transferred to the power of disposal of the two transnational companies and submitted to their private control and its interests of exploitation (see chapter 1.1). At the same time, RWE and Veolia succeeded to guarantee themselves a fixed yield written firmly into partial privatisation law and consortium law.

Article 3, paragraph 2 of the law on partial privatisation of the Berlin Water Works of May 17, 1999 describes as one component of the water fees an “adequate interest

calculation of the capital necessary for the operation of the business”²⁴ that enters into the calculation of the water prices. This means that the shareholders of the BWB (country 50.1%; RWE and Veolia 49.9%) beyond the mere cost coverage in the setting of prices are allowed to plan in a yield for themselves. The (fictitious) interest that may run into the water prices is measured according to the “average yield of ten-year German federal obligations over a period of 20 years that precede the respective calculation period [...]” – that corresponds to about 6%. In the secret consortium treaty, this interest is not only fixed for purposes of calculation – meaning running into the water prices – but as really guaranteed yield on the basis of the capital necessary for the running of the business to the benefit of the two companies (Lanz 2005: 14; Lederer 2004: 357).

Originally, there was still a further regulation in the law that was supposed to increase this 6 percent interest by 2% (“r+2”); however, after a suit by the oppositional fractions Alliance90/The Greens and PDS against the whole partial privatisation law in the second half of the year 1999, this yield was declared as unconstitutional by the Berlin Regional Constitutional Court. Also hit by that judgement was the “efficiency increase clause” that was supposed to allow it to the consortium partners to hand down profits that resulted from rationalisation only after three years with fee-reducing effect to the clients. On the whole, however, the partial privatisation law, 6% interest clause included, was judged legal by the Regional Constitutional Court.

A few days only after the court judgement in one breath with the vote on the conclusion of the treaty, in the quickly called chamber of deputy session on October 29, 1999, there was added an Article 23, line 7 into the consortium treaty. A motion without further explanation that was distributed by finance senator Fugmann-Heesing to the deputies said that rules of the partial privatisation law that concerned the question of yield and that in the course of an examination of the law by the Supreme Court had been declared unconstitutional had be compensated: In Art. 23, line 7 “... the country of Berlin obligates itself to compensate to the full extent the lower gains and higher losses that result from the annulations to the BB-plc [the BWB participation plc of RWE and Veolia, A.P.]” (compare on that also Köhler 2003).

The judgement of the Constitutional Court is circumvented this way: What the law does not deliver is regulated by a contract under private law. On the whole, there results for RWE and Veolia a guaranteed yield “close to the two-digit range” (Lederer 2004: 357). This has as an effect that in the years from 1999 to 2003 366.6 mln. €s were flushed into the registers of the companies, while the country of Berlin only received 133.2 mln. – this even though the country holds 51.1 percent of the shares of the BWB and Veolia and RWE together 49.9 percent.

Net payments to the region and companies since the partial privatisation

	1999	2000	2001	2002	2003	99-03
Required Business	3,007	3,194	3,433	3,596	3,703	-

²⁴ The so-called capital necessary for the operation of the business encompasses the investments (pipes, clearing works etc.) in addition to the circulating capital (cash holdings, monetary assets etc.)

Capital (m. €)						
Contractually Guaranteed Interests (%)	9.3	9.14	8.97	8.7	8.5	-
Effective payments to RWE and Veolia (m. €)	7,9	80,8	79,5	78,1	120,5	366,6
Payments to The city of Berlin (m. €)	7,7	71,0	19,4	-81,6	116,7	133,2

* November and December

Source: Data following Lanz/Eitner (2005); own presentation

The change in the partial privatisation law

The fact that a few passages of the yield guarantee in the partial privatisation contract of 1999 were declared unconstitutional, at the end of 2003 led to an amendment of the law. This change in the partial privatisation law contains more precise regulations on how the compensation fixed by contract favouring the two water multinationals RWE and Veolia must be fulfilled for the passages of the law not in conformity with the constitution. Of course, Klaus Lederer (PDS) in his speech before the chamber of deputies on December 11, 2003 declared that the contract was a “budgetary catastrophe”; nevertheless, the Red-red Senate decided, instead of entering a political conflict over the disastrous contract with the companies, to yield to their profit greed.

In article 2, line 4 of the law, it now says: “The appropriate calculation for the interests on operating capital corresponds at least to the average yield on ten-year German federal obligations [...]. The interest rate is fixed annually by legal orders of the Senate following Art. 5, no. 2. For [...] 2004, the interest rate amounts to at least 6 percent.” (Berlin Chamber of Deputies 2003). The legal rate that way is flexible towards the top.

At the same time, the following measures were fixed in the consortium treaty also changed in 2003 (Senate of Berlin 2003): The country of Berlin declared it would forgo large parts of the concession fee that – as also shown in the coalition treaty between the governmental parties – should have amounted to 68 mln. Euros annually. Until the year 2008, the country that way decided to forego 266 million d’€ (53.2 million €s annually). After 2009, the sum which the country will renounce to then will run up to at least 34 millions, meaning until 2028 – the end of the running time of the privatisation treaty – to 840 millions. Overall, the city renounces to 1.116 billion Euro (Lorenz 2003). For the period from 2000 to 2005, the yield guarantee and the regulations resulting from that resulted in RWE and Veolia being able to cash in 495 mln. €s, while the region of Berlin needed to make do with 171 mln. €.

Moreover, a new depreciation method was stipulated to compensate for the originally planned revenues refused by the Constitutional Court that were to come from the “efficiency increase clause”. Here it is a matter of lowering the tax burden of

the BWB. The country that way suffers revenue losses. Should all of that not suffice to fulfil the guaranteed yield, it will again forego additional fees of the water companies to the country of Berlin, namely the basic ground water usage fee. If that is also not sufficient in order to satisfy the profit expectations of the transnational water corporations, there will follow the direct reach into the pockets of the state (Senate of Berlin). So that the latter does not become necessary, the water price which the women and men citizens have to pay, has been rising ever since.

In order to shed light onto the dark of the fee calculation and the questionability of the rising water prices in favour of the transnational companies, the Association of the Berlin-Brandenburg Apartment Enterprises (BBU) in May 2005 decided to go to court against the Senate and the Berlin Water Works. The goal: to finally gain an insight into the water price calculation. At the same time, they sued the finance administration in order to gain access to the consortium treaty. The result of the suit is that the data on fee calculation continue to remain under lock and key, because these contain “confidential data internal to the enterprise”. On the basis of the water price decree, the fee calculation of the BWB is approved by an “independent” economic control agency, by the executive council, on which also Harald Wolf sits, and moreover is examined by his Senate Administration for Economics, Labour and Women, being the competent fee approval agency, with respect to its so-called “acceptability”. The problem is: Water prices in Berlin belong among the highest in Germany. Nevertheless, also economic senator Wolf (PDS) thinks it admissible that the citizens of Berlin pay fees to a monopolist whose prices can’t be retraced.

The privatisation of the BWB in no way led to sinking costs on grounds of efficient, private management concepts. Even less so does it lead in the long term to a relief of the Berlin budget. After all, the guaranteed yield must be paid. Picking up a community credit at an interest of ca. 4.5% in the year 1999 would thus have been considerably cheaper.

2.3 Reduction of jobs

Financial senator Fugmann-Heesing and the other privatisation advocates in the parties of the grand coalition tried to sell the Berlin privatisation in the guise of administrative language as a purely administrative financial technique: “wealth activation” was the slogan. The fact that the question of privatisation was especially also one of social and employment policy, was supposed to be veiled by this lingo.

Of course the ÖTV in the course of partial privatisation negotiations was able to push through an exception of business-related dismissals until the year 2014; the destruction of jobs by way of pre-retirement plans, fluctuations, severance payments etc. was not hindered by that. From 1995 to 1999, already 752 personnel posts were reduced; since the take-over of company management by RWE and Veolia an additional 1166 have been cut. And the management is firmly determined to continue to reduce personnel. It is expected that at the BWB, they won’t manage as with BEWAG and GASAG to reduce the number of jobs after privatisation by ca. 50% (!), nevertheless, an end of job reduction is not yet reached by far.

Employment at the Berlin Water Works, 1995-2005

Year	1995	1997	1999	2001	2003	2005

Employees	7014	6583	6262	5550	5283	5096
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Source: Business Reports BWB

An additional opportunity for reducing personnel costs was created in May 2000 with the creation of the Berlinwater personnel service ltd. The daughter company now working under the name Perdie.net as a lease work agency accepts among other things youth that were before trained at the water works and lends them either back to the BWB or to strange firms. On the one hand, there are valid at this firm worse collective agreements, on the other hand, this employment model was subsidised by the Employment Agency Centre (Bread for the World, 2005): This means that the wage reduction strategy of the enterprises was even promoted still by the public authorities.

If you compare the share of personnel costs in business expenses²⁵ with the expenditures for the guaranteed yield of the two transnational companies, it becomes clear how the cost proprieties within the firm have shifted. While personnel expenditures between 1999 and 2003 decreased by 3.3 percent to somewhat less than a fourth of business expenses, in the same period the yield that flows to RWE and Veolia increased: namely within 5 years from 0.75 to 10.9.²⁶

Payment to the companies, compared with the personnel costs, 1999-2003

	1999	2000	2001	2002	2003
Yield payments to the corporations RWE and Veolia					
In percent of the whole business expenditure of the BWB	0.75	7.1	7.3	7.4	10.9
In mln. Euros	1060.1	1139.0	1084.1	1053.8	1110.4
Personnel costs in percent of expenditures	27.4	25.1	25.1	25.6	24.7

Sources: Lanz/Eitner (2005)/Business reports of the BWB

Jobs were lost not only in the Berlin Water Works but also among the suppliers. The investments in the service networks were considerably reduced, which is not only ecologically problematic and will cause future follow-up costs, but also gives the small and medium (underground) construction firms a hard time. In the same way, the massive price dumping by the new management of the BWB has a negative

²⁵ Business expenses are defined as the sum of personnel costs, depreciation, material, interests, taxes and special expenditures. In the position "interests", it also contains the payments of the yield guarantee to the companies.

²⁶ An additional aspect of the extension of commercialisation and privatisation to the work relations is the question of work organisation or respectively the quality of the job. There is, however, up to now not yet any publicly available information on effects like work-time condensation etc.

effect on the local firms. The enterprise deaths and the resulting loss of labour time are substantial, but have not been quantified up to now.

Finally, the possibilities of trade union organisations were hindered by the partial privatisation. Thus the workers of the former municipal enterprises find themselves confronted with different owner constellation, which makes solidary action more difficult: sinking numbers of workers reduce their political weight, and partial out-sourcing weakens the capacity for mobilisation and negotiation.

2.4 Privatisation international

The commercialisation of the Berlin Water Works did not only result in very costly purchases of enterprises abroad, but also an international expansion. The BWB were supposed to become the communal-capitalist Global Player in the water sector. The export strategy of the BWB gained in speed for the first time in September 1997. Of course, the BWB were already active with a sewage filtering device in Namibia, and on the road as consultants in Turkey, Chile and China, but from the point of view of the BWB presidium, the take-over of 21.1% of the Budapest sewage water disposal by a common consortium together with Générale des Eaux (or respectively Vivendi, or today Veolia) represented a breakthrough. Since then, the privatisation of the water supply driven forward by the BWB draws larger circles, for instance, the BWB have acted as privatisation pioneer in Albania (purchase of the water works of the city of 100000 inhabitants of Elbasan).²⁷ Also in these cases, the yield expectations of the stakeholders in Berlin, Essen and Paris occupy central stage and not local needs.

As a result of the partial privatisation, the international activities of the BWB were concentrated in the Berlinwater International plc. At the end of 2005, the Japanese conglomerate Marubeni with the support of the Munich offices of the international lawyer cabinet Ashurst for 62 mln. US-Dollars bought 80 percent of the shares of the enterprise. Marubeni is an institutional investor who owns super-market chains in Japan, power stations in the USA and on the Philippines, a car-part supplier with residences in the USA, Great Britain, and France and many more firms.

The city council of Budapest showed much concern that the water supply of the city became more and more an object of speculation. Instead of addressing these worries, the Senate administration for the economy approved the sale of Berlinwater International that was advised by the way on this transaction by the Berlin office of Freshfields Bruckhaus Deringer that as we already saw, bears part of the responsibility for the fiasco of the Berlin privatisation contract (compare chapter 1.2). And the ruling mayor Wowereit on occasion of a visit to Japan in 2006 showed happiness about this development: “My impression is that Marubeni wants to extend the water business world-wide and for that purpose also wants to use the know-how of the Berlin Water Holding which we are glad to offer.” (Senate chancellery, Berlin 2006).

A thesis that is often brought into connection with privatisation is that of the “retreat of the state”. That is by no means the case. Instead it is transformed in its

²⁷ For a detailed analysis of the activities of the Berlinwater International Inc, compare KOSA (2004). The dimension of the station, for instance, does not correspond to local needs.

form. The public authority is ever less the supplier of social services, but becomes a “local competitive state” (Mayer 1990). That means, the administration and state institutions of all kinds are aimed at creating as profitable conditions for the enterprises settled in the city as possible.

One instrument for that is the competence centre Water Berlin (KWB) organised as a public-private partnership which is result of the partial privatisation of the BWB and sponsored by the Senate. The shareholders of the institution are with 25% each Veolia Water, the Berlin Water Group, the TU Berlin and the technology foundation Innovation Centre Berlin (TSB). That way the transnational companies secure themselves access to knowledge sources in Berlin. For the rest of it, Veolia since the winter semester 2005 finances the professorship for residential water economy of Matthias Barjenbruch with 750,000€.

2.5 Ecological consequences

A large-scale comparative study showed this year that Berlin drinking water is of highest quality: Grade 2 + (on a scale from 1 to 6, 1 being the best). Despite this good result, the pressure on the company is high to give precedence to the yield expectations of the great corporations at the expense of the local water economy.

The state of Berlin surface water is dramatic on the whole. Its quality is already so bad today that the new European water guideline directive (WRRL) to be implemented until 2015 will in all likelihood not be fulfilled (compare also: www.wrrl-info.de). One unfavourable condition for good water quality is the slow-running speed of the Spree. The “forces of self-cleaning” of the river are not that high, therefore. That brings considerable disadvantages in particular on the territory of the city of Berlin. Because around a fourth of the Spree water running out consists of water being led in, of which in turn $\frac{3}{4}$ come from the (pre-cleared) sewage waters of the public clearing works.

In particular, however, Berlin is lacking adequate sewage water disposal possibilities (subterranean storage basins, possibilities for separating out canalisation flows). Therefore, in case of strong rains, there occurs in the inner city an overflow of the mixed canalisation from the total of 63 lead-in tubes. Uncleared sewage water then flows directly into the river. That happens 5-30 times a year, meaning 6-7 mln. m³ of sewage water manage to get into the Spree uncleansed. Instead of approaching this problem in a resolute way and bringing, as demanded by the WRRL, all natural waters in Berlin (lakes, channels and the Spree) into a good state, the problem is postponed.²⁸ That way, it would be possible to reach bathing water quality within a couple of years for all Berlin waters – which would mean an immense increase in living quality for the Berlin population.

From the point of view of ecology, there is a lot to do, therefore. Without commercialisation, the BWB would be able to realise the whole water circulation and orient itself in a more strongly ecological direction. The pressure for yields, however,

²⁸ One solution concept which is based on sewage water tanks to be anchored on the Spree is proposed by the project Spree2011 of the LURL.watersystems.gmbh (compare www.spree2011.de). Also when the BWB and the Veolia professorship financed by Veolia pushed ahead by the TU are partners of this project, its implementation is sluggish. Moreover, other projects are not pushed ahead with in a consequent way, such as for instance, a better sewage water management.

would make this impossible. The consequences of partial privatisation of the BWB are therefore not only a question of the social relationships, but also a question of social natural relationships.

RWE/Thames Water – High losses in water = more profit

The “entrepreneurial philosophy” with which RWE/Thames Water acts at other places makes sceptical: Infamous is the environmental balance of the firm in London. That way, RWE- Thames Water made it even into the German headlines of Spiegel-Online (Kröger 2006). On July 26, 2006 the magazine reported that Thames Water had disposed in spite of the dry weather that gardens and park installations should not be watered. However, the strict savings would not be necessary if due to the bad pipes an enormous part of the water - 894 million litres – did not seep unutilised! The national British regulation authority Ofwat by contrast considers a daily loss of 860 litres per day permissible.

Thames Water escaped the penalty of 200 mln. € threatened by Ofwat by promising an investment of 220 mln. Euros into the rotten pipe system within the next five years. In addition, Ofwat by the way considers a penalty payment of up to 205 mln. Euros due to bad customer service. First, there should be awaited an examination report by the economic investigation society Ernst&Young.

2.6 Urban development consequences

By way of the internationalisation and partial privatisation of the BWB, the spatial structure of the Berlin water economy changed as well. The commercialisation was supposed to make the BWB capable of international exports. At the same time, the entry of two transnational companies, however, undermined local value creation. First of all, profits are withdrawn from Berlin which leads to a loss in purchasing power; second, the investment quota of the BWB after the partial privatisation 1999 sank by about 50 percent in comparison to the preceding years. There are up to now no systematic investigations of the effects of shrinking investments, but estimations assume that among the suppliers of the BWB several thousand jobs were destroyed – next to the almost 1200 jobs that were eliminated at BWB.

This, although the investments are supposed to sink further according to the plans of economic senator Wolf (PDS): Wolf strives to reduce the investment volume of the water works fixed at 250 million Euros annually to 200 million Euros at first. An investment volume lowered for the duration, in the medium term would lead to a reduction of necessary operating capital. After all, the minimal yield to be paid to the private shareholders is calculated on the basis of necessary operating capital. Thus, the yield guarantee regulated in the consortium contract leads to lower investment into the infrastructure of the water works. And nevertheless, prices are rising that not only burden the clients, but also smaller firms in particular that need a lot of water.

Commercialisation and privatisation of the Berlin Water Works had as their consequence a business politics that is antisocial, not ecological, catastrophic from the point of view of budgetary policy and economically harmful to the city.²⁹ The Red-Red Senate has continued this disastrous heritage of the grand coalition. Those

²⁹ A good overview over the consequences of partial privatisation is also offered by the short study by Klaus Lanz and Kerstin Eitner of the consulting firm International Water Affairs that steps in for the maintenance of community water supply as a public service (Lanz/Eitner 2005).

responsible for the consequences of privatisation by the way continue to be in office: One should only think of Annette Fugmann-Heesing, former finance senator and today vice regional chairman of SPD and MdA or of Klaus Wowereit, back then member in the “Working Group Wealth Activation” of the SPD and there proponent of privatisation – also in the future as Ruling Mayor of Berlin.

3) Perspectives of democratisation and social-ecological renewal of the Berlin water works

The partial privatisation of the BWB was accompanied by criticism from the beginning on. However, this was limited essentially to parliamentary conflicts between opposition and grand coalition or respectively conflicts within the coalition party SPD. The trade unions rather tried to influence rather the “how” of an impending privatisation than the “whether” (at least in the confrontations since 1997). The few warnings articulated by civil-society actors, barely reached a larger public (Hartmann 1998: 188).

However, the criticism has never stopped even after the conclusion of privatisation by Fugmann-Heesing in October 1999.³⁰ On the contrary: the attention to the topic of privatisation and its consequences has increased precisely in the last two years. Responsible for this are among others some very few individual persons and the protests of the globalisation-critical movements against the concepts of neoliberal politics. Local struggles against privatisation, especially also in the area of water, are noticed on a global scale and discussed. Yet also changes in the overall social climate in the Federal Republic – tread off by the protests against social demolition and Hartz IV increased the attention to the social consequences of commercialisation and privatisation of public services. The privatisation discussions around the public hospital Vivantes, the Charité and the sale of additional stocks of the public apartment construction firms have additionally fuelled the discussion. For the case of the water firm, the regularly price increases since 2004 ever again provided for debates that also resonate in the media reports.

Before the last water price increase by 2.5 percent in January 2006, the consumer centre of Berlin distributed a model protest letter.³¹ By way of this letter, it was possible to lodge one’s objection in accordance with Art. 315, line 3 BGB against the price increase, or respectively announce the payment as only subject to legal re-examination, since it “was neither price-efficient nor friendly to the consumer”. Aside from the demand to prove the “need and appropriateness” of the increase of the water prices by “provable and examinable complete opening of the records”, the letter fundamentally questions whether the current calculation of the prices is admissible. Because the “Overall conditions for water supply” (§24, Par. 3) show that changes in water prices should only be retraceable to factors that are attributable to the “procurement and supply of water”.³² The yield payments of several millions to

³⁰ Precisely the actors in Berlin that feel obliged to the „sustainability“ discourse and the Agenda 21 were surprisingly silent at the topic of privatisation, even if in these circles a “sustainable water economy” was discussed. Compare in an exemplary fashion Göll (2001).

³¹ The letter draft can be downloaded from: www.verbraucherzentrale-berlin.de/v/html/modules/wfdownloads/singlefile.php?cid=8&lid=70.

³² There one also finds the sentence: “The calculation factors must be shown completely and in generally comprehensible form.” See: www.bwb.de/medien/pdf/VBW_10_05.pdf.

stockholding companies such as RWE and Veolia should hardly fall under that point.

There are critical voices also within the parties. On November 26, 2005, the party congress of the Berlin SPD – on initiative of the left-wing Thursday circle – asked the Senate (and that way its own leadership) to examine the option of re-communalisation. Also among Alliance90/the Greens, criticism is increasing. And the WASG in its programme for the elections to the Chamber of Deputies explicitly demands the retraction of partial privatisation. The Left Party.PDS that participates in the government has also announced to want to examine the options of a re-communalisation.

In spring 2006, there was founded the Berlin “alliance against privatisation” that among other things demands the re-municipalisation/regionalisation of the water works. The “Berlin Water Table” that was founded in summer 2006 even deals exclusively with the Berlin Water Works and is composed among other things by activists of the Berlin Renters Society, Attac Berlin and numerous individuals. There approaches are discussed as well, how beyond a possible buying-back of the BWB, alternative concepts for the democratic control of the BWB might look like.

The point in time for a re-communalisation of the BWB before this background seems more propitious than ever. The increasing criticism in the city itself but also the repurchase demands of numerous US mayors from RWE/Thames Water and the criticism from Budapest of the sale of Berlinwater International to the Japanese conglomerate Marubeni provide for a climate that makes changes appear possible also in Berlin. The occasion for the buying-back demands of the US mayors by the way is the announcement of the RWE management to want to exit from the non-European water business. Only three years after the entry into the global water business, RWE announced on April 11, 2005 that Thames Water and American Water are supposed to be sold. With the exception of the water daughter Pridesa (Spain) all continental-European water participations are attributed to the branch RWE Energy. This would also hold for the BWB if a buyer can be found, because up to now nobody yet seems to want to approach the rotten London water supply. The water business after all did not yield the kinds of profits that the RWE stakeholders demanded.

A good news is that struggles against water privatisation can be won. In the FRG, there have been in the meantime about 25 citizens’ petitions that were able to prevent imminent privatisations in the water sector. Once a certain level of attention is reached and it comes to a critical citizens’ petition, these have up to now never gotten lost (Passadakis 2004: 84).³³ Concerning the question of an already (partially) privatised firm, the perspective looks visibly more complicated. Yet, here as well, there are a number of successful examples: El Alto, La Paz, Cochabamba (all of them Bolivia) Santa Fe, Atlanta, Grenoble – and Berlin’s neighbouring town of Potsdam.

³³ At the citizens’ vote in Mühlheim on Main, for instance, 96.94% of the women and men citizens voted against the project of the city to privatise the local city works (Drexler/Kaiser/Schmidt 2006; compare also <http://www.buergerbegehren-muehlheim.de>). The mayor of Mühlheim, a.M. that wanted to get the privatisation through at all costs was advised by the way by the enterprise consultant firm Berlin Advising Services (BRD). Fugmann-Heesing as well since 2002 works under contract with them.

Potsdam: Re-communalisation by dissolution of contract

In the year 1997, the Potsdam city councillors under back then Mayor Mathias Platzeck agreed to the partial privatisation of the Potsdam water supplier. Like in Berlin, also in this neighbouring town, there dominated the argument that budgetary holes needed to be mended. The city deputies had additional goals: On the one hand, the water prices were to fall for the inhabitants, on the other, costs for the community were supposed to sink. The enterprise Eurawater received the supplement for 49% of the shares and despite this minority participation also for the company leadership. However, the account of the city deputies did not pan out: in the period of 1998 to 2000 alone, Eurawater had increased the fees per cubicmetre of water from 4.92 DM to 8.89 DM. The goal line was 16.40 DM in 2017; that would have been a renewed increase by almost 100% in 17 years. The city of Potsdam, thereupon, rescinded the contracts with Eurawater. It is estimated that this separation has cost the community of Potsdam 5-10 mln. DM: 4.9 mln. DM for the repurchase of the shares of Eurawater and a compensation payment whose level is up to this point kept silent.

Despite backwind for those that wanted to fetch back water supply into the property of the public authorities and democratise it, the hurdles in Berlin against such a step are high. Of course, the partial privatisation law is legally disputed and the enterprise construction and that way the privatisation contract is also not compatible with the principles of the Berlin Constitution. Nevertheless, its private legal form prevents it from being severed quite so easily.

Finally, the contract between the Senate administration for finances under Annette Fugmann-Heesing and RWE and Veolia has been negotiated on purpose in this form. That in the course of its negotiation, the modalities for a possible contract resolution were “forgotten”, is only a side aspect. In any event, the Red-Red Senate as well retracts to the formula “*pacta sunt servanda*” – contracts must be kept.

3.1 The financial modalities of re-communalisation

In spite of the conviction of the Senate that a one-sided renunciation of the contracts and a subsequent repurchase are politically not conscionable, there exists a document from the economic administration that deals with the financial scenarios of a buying-back. Literally, we can read in this paper:

“Scenario 1: Repayment of the purchase price of 1687.5 mln. €s + interests presumably at the level of $r+2\%$: (i) base year 1999 (9.3%) 13.06 mln. €s; (ii) year 2000 (9.14%) 76.97 mln. €s; 2001 (8.97%) 75.53 mln. Euros; year 2002 (8.7%) 73.26 mln. Euro; year 2003 (8.5%) 71.58% mln. €s. Repayment sum: 2000 mln. €s.

Scenario 2: Payment $r+2\%$ for necessary operating capital until the year 2028; no repayment of the purchasing price. The cash value plus interest at this point amounts to 3.000 mln. €s + 49.9% of the difference in between depreciation from procurement and production costs and depreciation from re-procurement values (around 250 mln. Euros). Overall charge about 3.250 mln. Euros. Under scenario 2, there needs to be counted with interest rates, necessary operating capital and depreciation differences in the future, so that the overall value can only represent a general magnitude.”

In the case of a repurchase then, sums could possibly occur that move from ca. 2 bln. up to at least 3.25 bln. Euros. The essential statement of the calculations, however, is that the Senate has no idea how large a repurchasing sum might be. Of course, the Berlin Left Party.PDS chairman Klaus Lederer assumes that in the case of a re-communalisation “all investments made up to then, the already realised claims to profit and a compensation for the profits already promised until the year 2029” (Lederer 2005) need to be paid by the country. However, the Senate may not even know what needs to be paid, since such a case is not regulated in the treaty and the price would ultimately be the result of political conflict. However, the Senate eschews this conflict with the transnational companies RWE and Veolia.

The paper of the economic administration also contains a statement on what kind of costs the region would incur if the contract was not rewound. The costs estimated in “Scenario 2”, the city/country/region bears precisely if the privatisation contract continues to act (by way of reductions in income, profit losses in the framework of the disproportional distribution of profits and – if this is not sufficient – even by payments to RWE and Veolia from the regional budget). The reasons for these costs are the obligations that the city of Berlin has entered with the privatisation contracts with RWE and Veolia until 2028 (guaranteed yield of $r+2\%$ on the necessary operating capital including depreciation differences etc.). This means that a sum of 3.25 bln. Euros faces the country also in this case – maybe even more.

A repurchase becomes potentially also ever more costly, because by means of various mechanisms, the capital necessary for operation is increased ever further. The earlier a re-communalisation was to take place, the cheaper it would be for the country of Berlin – presumably. However, what costs precisely would face the country finally in the case of a unilateral breach of contract, remains unclear – this is ultimately a question of the political relationships of forces – of protest potential in the city. Even if the case seems hardly comparable: In Cochabamba/Bolivia, the compensation after contract renunciation and suit by the private firm amounted to one US-\$.

3.2 The democratisation of the Berlin Water Works

A simple legal lever to get a re-communalisation of the BWB coming does not exist. What is clear only is that it requires massive social pressure to get it through. Apart from the question how a re-communalisation could be implemented, it is also a matter of finding a long-term perspective for the social infrastructure water supply in Berlin. Already as a municipal/regional enterprise, the Berlin water Works were marked by authoritarian structures, by which administration and management ruled the enterprise in a non-transparent way; since the mid-90s, there was added the commercialisation of firm structures and an internationalisation of activities.

Since the partial privatisation 1999, Berlin water policy is also made in London, Essen and Paris. The shaping of the human right to water and the right of disposal over the social infrastructure necessary for that lie not in the hands of the Berlin population, but are largely withdrawn to democratic control. A re-communalisation would therefore be a necessary, even if not sufficient step towards a social and ecological public firm. In the light of the linkage between opaque administrative structures and commercialisation processes since the re-foundation of the BWB into

an institution of public law and in the light of the disaster of partial privatisation, a democratisation of the Berlin Water Works seems necessary. It is scandalous that democratic principles do not extend to such an essential sector such as water supply. The reason for that is that by way of the models of representative democracy at the federal, country and municipal level, there solely acts a form of low-intensity democracy. The apparent failure of this form leads to global struggles – in the context of local political confrontations – there is wrestled for at least extending the forms of representative democracy that exist up to now to public service enterprises. The municipal water company SEMAPA in Cochabamba (Bolivia) or the public energy supplier SMUD in Sacramento (USA) are examples of that.

SMUD – a democratic energy supplier in Sacramento/California

In the USA, there are numerous examples for democratic public service firms. The Sacramento Municipal Utility District (SMUD) is the public energy supplier for 550,000 consumers of the Californian city of Sacramento. The enterprise belongs to the citizens of the city. They every four years elect the executive (Board of Directors). The seven members of the executive represent various districts of the city. They determine the guidelines of the enterprise and name the top manager. National surveys regularly point out SMUD as one of the customer-friendliest energy suppliers. For that, there provides among others the social and ecological orientation of the firms. In there belong for instance price reductions for households with low income and comprehensive energy saving programmes and investments in renewable energies. Next to direct elections to the executive, there are various measures that make possible a participation of the inhabitants of Sacramento in the enterprise policy of SMUD. Transparency is also provided by the fact that agenda and video-clips of the executive sessions can be found in the Internet (additional information under: www.smud.org).

Re-communalisation in Cochabamba: ¡ El agua es nuestra!

The municipal water enterprise of the city of Cochabamba, SEMAPA, was privatised in 1999 – in the same year as the Berlin Water Works – upon pressure by the World Bank. By means of the regulations of an illegal secret privatisation treaty, the firm Aguas del Tunari – a consortium formed by the US company Bechtel and the Spanish enterprises Abenoga – was able to obtain a yield of 15 percent. This type of privatisation contracts was later on legalised with the help of the privatisation law 2029 that had been drafted by the German Society for Technical Cooperation (GTZ) (Gómez/Terhorst 2005:122). Growing water prices and the expropriation of water pumps for the self-supplying of neighbourhoods kindled a one-week general strike and massive protests that led to the flight of Aguas del Tunari from the city (Cecena 2004).

In the year 2001, the social movements that had joined in the coordination for water and life (Coordinadora del Agua y de la Vida) to push through a new statute for the re-communalised water enterprise. Following this statute, in the future three of the seven executive members need to be elected in general secret elections. Moreover, one post is occupied by a member of the enterprise trade union, yet another one by a member of a professional association and two executive members are named by the mayor.

Following the elections in April 2002, an executive staffed with three

representatives met for the first time. Apart from the participation of citizens in the business policy of the water supplier by elections, Article 15 of the new enterprise statutes made possible forms of direct participation. This option is being experimented with at this point. One result of this process is the introduction of an office for “social control” within the water enterprise. In it, representatives of civil society and of water supply work together, in order to uncover cases of abuse and corruption. Furthermore, there exist in the Southern zone of the city that was not yet attached to the central supply network, about 120 neighbourhood water committees. These as well enter to get involved increasingly in the planning of SEMAPA.

The new enterprise statute is thus a combination of a public water provider in communal property with elements of representative-democratic control by women and men citizens plus developing structures for enabling far-reaching direct participation and control by the women and men citizens of the city. Even if numerous difficulties (for instance, the raising of investments) did not yet lead to a substantial improvement of water supply, it happened by way of mobilisation and protest of the population to prevent the threatening deterioration of the situation by the company Aguas del Tunari, and to improve by the democratisation of SEMAPA the conditions for the gradual realisation of the human right to water.

Component 1: Control by the elected executive

The forms of representative democracy that were chosen in Cochabamba and Sacramento are quite diverse: forms of political control are always a question of local traditions and social structures. In Berlin as well, the concepts for a democratic shaping of social infrastructure might be very diverse. The two central groups in a basic service such as water supply are its consumers and producers. The representation of these two groups in a model for democratic Berlin Water Works should be respectively in the foreground. This means that already existing mechanisms of enterprise co-determination (compare: <http://mitbestimmung.verdi.de>) by those employed should be taken over or respectively developed. Ultimately, a change of public services in the direction of more democracy and social shaping, is only able by way of cooperation between the workforce and the women and men users (Zeller 2004: 36).

Moreover, in the case of a re-communalisation, the Berlinwater Holding plc would need to be dissolved and the daughter firms be placed under a unified control in order to enable democratic control in all parts of the firm and to push back the splitting-up of labour relationships – for instance, badly paid leased work.

At this time, both the owners of the BWB (the city of Berlin, RWE and Veolia) as well as the employed are represented with eight persons each in the supervisory board. In the four-person executive, meaning the leadership of the enterprise, there sit respectively one manager by RWE and Veolia, in addition a technical executive and the personnel executive recruited from the trade unions. The change of this model would pre-suppose a new Berlin business law, which structures the ipc up to now following the model of German stockholding societies. The democratically transformed BWB could be governed as municipal enterprise of the country/region by a renewed executive – equally staffed by representatives of the citizens of Berlin and the employed.

Component 2: Citizens' budget

The problem of democratic citizen control, however, would only be redeemed to a very limited extent by the elections of a few executive members – for instance every four years. A continuous democratic process of co-determination by the population and a public confrontation over the corporate policy of the Berlin Water Works would not be reached that way. The problem of the shallow democratic depth of procedures of only representative democratic control leads to working, at a global front, on political forms, experimenting with them and debating them to extend these approaches up to now of democracy of low intensity. Also among Berlin parties, there are programmatic initiatives in that direction. According to the resolution of its congress, for instance, the PDS Berlin is concerned “both with the intensive use of the existing possibilities of democratic participation as well as with political conditions for a qualitatively new culture of participation” (PDS, Berlin 2003). The question, therefore, arises how a structure might look like that can guarantee the most far-reaching democratic control of the citizens over such an essential domain of social infrastructure such as water supply.

Next to elections, other forms of citizens' co-determination in Berlin are the people's petition and the people's referendum. However, this instrument would not be appropriate to a continual co-determination process as in a public enterprise. However, in Berlin, there have been for some time also democratic forms that make possible a cooperation of the citizens in financial questions – and this for the duration. The citizens' budget in Lichtenberg provides an example of that.

The first stage for the development of a citizens' budget took place there from April 2005 to September 2005. An intensive public campaign had preceded the procedure so as to inform Lichtenberg's women and men citizens comprehensively about the process. The process itself consists of a procedure in several stages at three levels of participation: survey, Internet and citizens' assemblies. Overall, about 4000 citizens took part in the process that decided on the distribution of freely available means of 30 mln. €s of an overall budget of 500 mln. €s. Lichtenberg is up to now the largest citizens' budget project in Germany, apart from a couple of model experiments in smaller communities in NRW.

Experiments with various forms of citizens' participation are very new in the FRG. Therefore, it can't be seen whether they burn down simply to a resource for legitimating the practice of to now of political structures and administrative apparatuses, or whether it is possible to develop citizens' participation into an autonomous, direct-democratic counter-weight or respectively to an equal-weight component of representative democratic power structure. That depends essentially of the political dynamics of civil-society groups and social movements that use such political forms. Precisely in the area of social infrastructure and precisely with respect to such an existential good such as water, the chances that there will be great interest are favourable, however.

Those who introduced the citizens' budget in Lichtenberg quite clearly saw themselves in the tradition of the original place of the participatory budget concept, the Brazilian Porto Alegre – at the same time venue of the first and several additional world social forums held by the globalisation-critical movement. There, going back to participation forms that developed in the 70s, not only the overall budget is co-

determined by the citizens, but at the same time, the individual sectors of social infrastructure such as schools, water supply etc. (Maltz 2005). The transfer to such experiences is still lacking in the FRG. In the case of the Berlin Water Works, it would be urgently mandated.

Before the background of the experiences with the fiasco that the ruling parties and the administration has caused in the area of public services, a new paradigm for the control of social infrastructure beyond authoritarian state, commercialisation and privatisation is necessary, a social appropriation by way of a link of tested elements of representative and direct democracy.

A water cooperative as alternative?

In the discussion over the transfer of formerly public, partially privatised or in a very few cases communal property into the hands of citizens, also the cooperative model plays a role. In the small village of Ellerhoop near Bremen, it came to the founding of a water cooperative in order to take over the communal water works there, so that it can be preventively protected against a possible (partial) privatisation (compare www.wg-ellerhoop.de). In Berlin as well, an already largely elaborated concept for the Berlin Water Works in cooperative firms is on the table (compare www.gesundheitsladen-berlin.de/WIBB/).

Even if in many cooperatives, the solidarity principle is anchored strongly, cooperatives are basically private legal firms. The position of public property is weakened, therefore, by the cooperative concepts. However, only he or she may join a cooperative who is willing to pay. It would also be problematic that in the case of a possible repurchase of the BWB, money should come from private means instead of by way of the general tax pot. The same holds for investments: cooperatives must bear these themselves and that way fix cost-covering prices. In the case of a basic service such as water and sewage water disposal with partly enormous investment costs, it is obvious that financing from the general tax pots must remain possible. Beyond it must be possible to include a basic service firm into general urban policy development strategies. In there belong for instance environmental policy and employment policy tasks but possibly also cross-subsidisation of other socially desirable tasks, for instance public swimming-pools.

4) Conclusion – the way to a public and democratic water supply firm

A democratisation of the Berlin Water Works on the basis of a re-communalisation is possible and in the light of the disastrous consequences also necessary; however, it stands before big hurdles. In spite of its questionability (compare Chapter 1.1), there is no easy exit from the consortium treaty; enterprise forms that would give the citizens of Berlin co-determination rights will only be reached by way of a larger political conflict. Because the parties in the Chamber of Deputies either refuse such a way or up to now shy away from it, what suggests itself is an initiative by civil-society groups. By way of popular petition and popular referendum it might succeed with corresponding public attention to establish a public firm that is controlled by means of procedures or representative democracy by the citizens. This is helped by the fact that by way of the most recent legal changes financially effective people's petitions are not excluded to start with. At the same time, it can be shown that the budget is relieved in the case of a re-communalisation (compare chapter 3).

The subject of a city-wide people's petition and a people's referendum, in one variant, might be only the Berlin Water Works. Or, on the other hand, a change of the whole Berlin enterprise law could be striven for. The latter not only structures the BWB, but also the BVG, the BSR and the Behala as ipcs following the German stockholding law. The social appropriation of public services in Berlin would be possible beyond the BWB as well.

So that Berlin water policies are no longer subject to the yield expectations by transnational companies, but can orient themselves towards social and ecological goals, the following goals should be pursued:

- the democratisation of the BWB. For that purpose, a new Berlin enterprise law is needed prescribing direct executive elections, direct co-determination following the citizens' budget concept and transparency,
- the re-communalisation of the BWB, meaning the country should for the relief of the budget and women and men consumers ask back the 49.9% of the BWB from RWE and Veolia,
- social prices! In a poor city like Berlin, what is needed are solidary fees for people with low income,
- appropriate employment situations. That also means no wage dumping, no leased labour and a stop to job reduction.
- A quick and complete realisation of the water directive. For instance, all Berlin waters should have bathing water quality.
- No commercial involvement by the BWB outside Berlin. Instead a solidary cooperation with public firms world-wide is needed to realise the right to water to North and South.
- No contracts of the country or by enterprises in regional ownership to lawyers' cabinets and consulting firms that have participated in the fiasco of the partial privatisation of the BWB,
- An investigation committee that deals with the privatisation of the BWB and a persecution of possible law infringements by criminal law.

In the light of the numerous privatisation disasters in the water sector world-wide, the question for a "whether" of a democratic public water supply is more quickly answered than the precise "how" of a new form of this existential social infrastructure. The combination hinted here of elements of representative and direct democracy are therefore only an incentive for the discussion how the social appropriation of the Berlin Water Works can be set in motion. Struggles against privatisation and for more democracy are winnable. The result would in any case be a liveable and more social city.

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Useful links to protest groups and critical individuals in Berlin:

www.berliner-wassertisch.net

www.bmgev.de

www.bmgev.de/privatisierung/konferenz-dokumentation/vortraege-mp3/index.html

<http://berliner-wasser.blogspot.com>

www.donnerstagskreis.de

In Hamburg:

www.unser-wasser-hamburg.de

In the FRG overall:

www.wasser-in-buergerhand.de

In the US:

www.foodandwaterwatch.org/water/corporations/RWE

On citizen budget-making:

www.brangsch.de/partizipation/haushalt.htm

www.buergerhaushalt-lichtenberg.de

On the big water corporations:

www.bwb.de and www.berlinwasser.de

and www.rwe.com + www.rwthameswater.com + www.rwe.com +

+ www.veoliawasser.de + www.rwe.com +

www.berlinwasser.net

Research institution on water financed by the corporation:

www.kompetenzwasser.de

Additional information on water privatisation:

www.watertime.org

www.unser-wasser.de

www.waterjustice.org

www.attac.de/gats/wasser

und www.attac.de/privatisierung/?id=wasser

www.spree2011.de

www.wrrl-info.de

www.normalnull.info