

The study of Bulgarian Gender Research Foundation
and WIDE (Woman in Development Europe)

“Faites vos jeux, Messieurs”
- SOFIA WATER CONCESSION –
ECONOMIC AND SOCIAL IMPLICATIONS”

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After 1997 the government of Bulgaria has taken steps towards the reconstruction and modernization of the water sector. It aims to improve regional water companies, by subjecting them to market mechanisms, gradually reducing the role of the central state authorities while increasing the role of municipal authorities and regional water companies.

The main objectives of the Municipality of Sofia /MoS/ for water and sanitation were to significantly improve the levels of service, through the introduction of modern management, operation and maintenance practices and investment programs aimed at rehabilitating and extending the existing systems. For this purpose, in the period 1998-1999, the Municipality of Sofia decided to award an exclusive concession for operating Sofia’s water and sanitation system, through international tender. The system had previously been operated by the municipally owned company V i K-Sofia, a Water Supply and Sewerage Company /WSSC/. In economic terms, the concession contract between the MoS and “Sofia Water” has been one of the biggest investments in the last decade of transition in Bulgaria.

Bulgaria’s water sector comes second only to the energy sector in terms of its attractiveness to foreign investors. Moreover, the Sofia concession was the first project of its kind in Bulgaria, which increased the level of interest. As expected, several large international companies applied for the concession.

The bidding started at a minimum of USD 150 million. This was the minimum investment that the future concessionaire had to provide for replacing the old water pipes in Sofia. It was estimated that the renovation of Bulgaria’s water and sewage networks as a whole would cost about USD 2 billion, which represented substantial business opportunities. Most of the companies that filed bids for Sofia water were also competing for other big projects in Eastern Europe.

The decision of MoS to grant the concession determined the subject of the concession, the term of the concession, the method for choosing the concessionaire, basic rights and obligations under the concession, and the type and amount of the guarantee for the fulfillment of the obligations. Finally, the

MoS authorize the Mayor to sign the contract with the successful bidder International Water Limited. This was done on 23 December 1999.

One of the pre-conditions of this contract was the allocation by the EBRD of a 35 million Euro loan. This was made in October 2000, with the aim of financing priority investments in Sofia's water and sanitation system. Under the terms of the concession agreement, the utility's service standards were to be progressively increased from their current levels. Furthermore, according to the project summary document, "The private sector provision of a municipal service is expected to have a significant demonstration effect in the other Bulgarian cities and in a region as a whole."

The city of Sofia offered foreign investors several advantages. These include: a large population, good quality water and favorable climate conditions, gravity-fed water supply, which minimizes the costs for the supplier, and one of the most important – citizens who are not used to stand for their rights.

The winner International Water Limited was required to establish a new company, incorporated in Bulgaria, which company would enter into concession contract with the MoS. "Sofia Water" was established initially with 75% of shares belonging to IWL and 25% to Sofia municipality /MoS/, through ViK. The EBRD /EBRD/ supported the financial contribution of IWL.

The concessionaire's responsibility is to operate and maintain the water supply and sewage system during the concession period. It has to design, plan, finance and construct the required capital investments. The MoS retained ownership of all existing water and waste-water infrastructure assets constructed by the concessionaire was also vested in the MoS, with the concession company being granted the right to use these assets. The duration of the concession was initially set at 25 years, extendable for a further 10 years. A significant capital investment program in the both – the water supply and the waste-water systems was required, to meet the target service standards, and the concessionaire was required to invest at least USD 150 million on capital works over the concession period. Altogether, the concessionaire was required to invest at least USD 152 million during the first 9 years of the concession period. The contract contains penalty clauses in case of breach of obligations by the concessionaire, especially with regard to the provision of services.

Of particular significance in relation to the Right to Water, the concessionaire is responsible for metering, billing and revenue collection, and has the power to threaten consumers with disconnection of the water supplies, if they do not pay their bills. The concessionaire committed itself to charge consumers according to an agreed tariff schedule. Although the schedule envisioned no rise in the price for the first 3 years, "Sofia Water" has not respected this. In effect, the contract handed over to a private company, with predominantly foreign ownership, decisions related not only to labour and social policy in water sector but also to physical and economic accessibility of water.

The root causes of most of Sofia Water's problems can be found in the way the contract was negotiated and implemented. The need for investments for repair and maintenance, combined with Bulgaria's economic hardships, created a favorable climate for IWL's entry. Another significant factor was the general lack of transparency that prevailed over the whole liberalization process in Bulgaria during the period.

Lack of transparency was a feature of the bidding procedure, the conclusion of the contract, its registration and implementation. This is compounded by the anonymity of IWL ownership, the two groups originally involved have since sold their shares on the London Stock Exchange. Few Bulgarians are aware that, around the time the Sofia Water concession was agreed, IWL was at the center of international scandals and business failures. The question arises, why did the MoS not take this into account during its decision making process.

Serious violations, both in terms of priority areas of investment and accounting, have been identified in "Sofia Water" by the controlling body "Omonit". This body was established by the municipality 18 months after the start of the concession. "Sofia Water's" investment program has focused on non-essential activities such as introducing a new Information Technology system for consumer charging and training staff to communicate with customers. Both of these activities have had either no substantial impact, or adverse impacts, on consumers. Only a relatively small part of the investment is aimed at substantial improvement of water supply.

Investment commitments were not respected by the concessionaire and there has been no reduction in water losses due to leaks so far; they continue to represent more than 60% of the water supply. As for changes in the information system for clients, payments collected from consumers are 4 times less than for the same period before the concession, despite all the new forms and documentation created.

As a result of this mismanagement, since the beginning of 2003 "Sofia Water" has been facing serious financial problems. Given "Sofia Water's" failure to account for large amounts supposedly meant for investment, it is clear that first and immediate purpose of this public-private partnership has not been achieved. Because these resources were not made available to the municipality, this failure has implications for Bulgarian's general living standards.

Another issue explored in the study is the Core labour standards, gender equality and decent work approach versus trade services liberalisation. The Bulgarian local and national government are blamed for not ensuring quality employment and for firing qualified people with experience and expertise in the field of water supply and wastewater servicing. Many highly qualified

engineers from the state enterprise were fired as well as a number of administrative personnel among whom many women were fired or were compelled to leave thus violating main principles of labour law.

From a right point of view, the impact of the concession on consumers is crucial. The essential issue is not water itself, but access to water, and pricing is an important aspect of access, because it is a way of controlling it. Until 2005, when a water and energy regulator was created, access to water in Sofia has been controlled by the concession-holder, rather than by central government or the MoS.

The results of the survey carried out in 2003- 2004 show general dissatisfaction with “Sofia Water’s” performance despite the improvements claimed by the concession- holder. Changes in the presentation of bills cannot substitute for real improvement in service quality. Overcharging clients and raising prices are two of the main violations committed by “Sofia Water”, which affect the Right to Water of the citizens of Sofia. Among the concession-holder’s many violations of the Right to Water, pricing remains the most sensitive issue for the citizens of Sofia. The rising prices of water supply and the problems of access to water showed to be more detrimental to women who are those who need water for household services and sustain the households’ budget most of the time. Women showed to be among the most dissatisfied users and were most frequently as younger and older women the breadwinners and heads of families. Single mothers and retired women prevailed among the most deprived and in the negative assessments of the Sofia water services.

The passive attitude of the state and the municipality, which de facto have been tolerating the situation so far, constitutes a violation of the human Right to Water. The state established a regulatory body – a Commission on Water Regulation as a part of the Commission on Energy Regulation, but this new regulatory body is not functioning well. In his competence is to fix utility prices. The problem for the citizens of Sofia will be the validity of the fixed prices for “Sofia Water” because the prices were established by the concession contract. Although, there are no riots yet in Sofia’s streets, despite of the serious implications for most households caused by the price raise. The failure of the state to adopt a comprehensive water strategy is another serious violation of this right.

Therefore IWL found in Bulgaria excellent opportunities for profit, including a strong governmental commitment to liberalization and deregulation, conducive legislation, and skilled and well-qualified personnel. Not least, it found a captive pool of customers who are not used to standing up for their rights. The company took advantage of flaws in the concession procedure and the contract itself. Its operation of the contract has been deeply

unsatisfactory. It has made promises it probably never intended to keep, directed its investments into non-essential services rather than modernizing crumbling infrastructure, failed to account properly for its investments and its use of the EBRD loan, contracted out essential activities such as emergency repairs and made many qualified staff members redundant. As the same time, the company is pushing for continuous increases in water rates, has allowed overcharging and has cut off water supplies in an arbitrary manner.

The PPP studied is still among the biggest, if not the biggest transaction which has taken place during the transition. Since its conclusion in 1999-2000, the PPP format has been broadly advertised for such transactions but its social and gender impact was not identified and emphasized. There is still mainly euphoria vis- a vis this approach and its potential negative effects especially in terms of HR implications, deregulation and weakened control over public goods management were underestimated. The Bulgarian government does not perceive it as an important issue within the WTO debate, or in the FfD process / Financing for Development /, etc.

A good number of recommendations were made and were referred to the government, including in the fields mentioned above: to strike a balance between the constraints for liberalization and the human right to water, to conduct human rights and gender equality impact assessment prior to taking an important decision about transactions in the field, as well as and regular monitoring about the need for more effective control over the concessionaire and over the main elements of the implementation of the right to water as prices, access, quality, non- discrimination and participation of civil society groups and women at all stages in the decision making process about water supply, to take into account the risks of the PPPs and to manage them in the better possible way, etc.

The problems pointed at in the study of BGRF/ WIDE of this striking example of malfunctioning PPP, are persisting also in 2008 and have to be analyzed more in depth at this stage. Namely, the role of the MoS has to be explored, the role of the EU and the EBRD and the one of the regulatory mechanism. In 2005- 2006 extensive legislation was adopted in the field of water services, water sanitation, etc. and the implementation of these fragmented pieces of legislation has to be studied in the context of its impact of Sofia water and the right to water of citizens.

The detailed study of Sofia water concession was presented by BGRF and WIDE at the NGO forums parallel to the Fifth ministerial conference of WTO in Cancun, Mexico- 2003, at the European Social Forum in Paris in November 2003, at the Public Eye on Davos- January 2004, and in many other occasions.