Public Goods & Governance

RECENT CHANGES IN GOVERNING PUBLIC GOODS &SERVICES

Volume 1 *** Issue 1 *** April 2016

Journal of the MTA-DE Public Service Research Group

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ISSN 2498-6453
JOURNAL DOI 10.21868/PGnG
ISSUE DOI 10.21868/PGnG.2016.1.

PUBLIC GOODS & GOVERNANCE

Volume 1 Issue 1 April 2016

PUBLISHER:
MTA-DE Public Service Research Group
Head of the research group and Editor-in-chief*:*
Tamás M. Horváth, DSc., full professor
26th Kassai str., Debrecen, H-4028 Hungary
http://www.kozjavak.hu/en/public-goods-and-governance

Aims and Scope

Public Goods & Governance is a semi-annual academic journal, aims to publish original material within the field of public policy, public management, governance and administration. This includes articles, shorter notes and comments based on theoretically and empirically grounded research on public goods, public service delivery and other public functions in a wide range of sectors, especially focused on recent challenges of governmental roles and new governance models in the market economies.

The journal welcomes submissions (articles, notes and comments) from anywhere in the world from both academics and practitioners. The maximum word limit for articles is 2500 words. Notes (not full academic papers presenting new phenomena, ideas or methods in a brief form) and comments providing additional thoughts and critical remarks to previously published articles should not exceed 1000 words.

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DOI 10.21868/PGnG.2016.1.1.

WHOSE DEMOCRACY? THE GREEK CRISIS, PUBLIC MONEY AND THE EUROZONE

Daniel Haitas[·]

Abstract: *In recent times much of the news and political discussion in Europe and beyond has been dominated by the issue of the present situation in Greece, in particular its debt problem, relationship to other EU Member States and place within the Eurozone. The major source of contention has been the differing opinions about the measures that Greece should implement in order to receive bailout money so as to avoid defaulting on its debts and remain a member of the Eurozone. The Syriza government employed rhetoric emphasising the democratic will of the Greek people in order to renegotiate the country's relationship to its creditors on more favourable terms. However, it often seems to be forgotten by those who promote and support this narrative that in the other 18 Eurozone countries there is also a democratic will and voting public which is concerned in particular with the way in which tax-payer money and public funds are to be spent.*

Keywords: Greece, Eurozone, financial crisis, democracy, bailout, Germany

Introduction

In recent times much of the news and political discussion in Europe and beyond has been dominated by the issue of the present situation in Greece, in particular its debt problem, relationship to other EU Member States and place within the Eurozone. The major source of contention has been the differing opinions about the measures that Greece should implement in order to receive bailout money so as to avoid defaulting on its debts and remain a member of the Eurozone.

1. The Greek Crisis

In 2009 it came to light that after decades of economic mismanagement and irresponsible fiscal practices Greece was entering into a crisis stage, with a debt spiralling out of control and facing the very real prospect of default. In order to avoid this Greece received bailout packages from the EC, IMF, and ECB (the so-called troika) in exchange for which there was an

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implementation of various austerity measures and structural reforms, which took a heavy toll on Greek society.

As a response to this situation, the radical leftist Syriza party led by Alexis Tsipras won the elections in January of this year on a wave of anti-austerity feeling and protest. The new government promised to roll back austerity measures and renegotiate Greece's place within the Eurozone and to challenge the policies of its European partners and creditors. The Syriza government laid a particular emphasis on the democratic will of the Greek people and at times used the rhetoric of oppression and liberation in relation to Greece's creditors (in particular, Germany) (Stevis & Thomas, 2015). This culminated in the referendum held on July 5 which asked the Greek people whether they accepted a bailout proposal put forward by the troika (a proposal which at the time of the referendum had actually expired) which led to an overwhelming „No" vote in support of the government's position (Kambas, 2015). This result was described by Tsipras as a „victory of democracy" (*CBS News*, 2015).

However, it often seems to be forgotten by those who promote and support the above narrative that in the other 18 Eurozone countries there is also a democratic will and voting public which is concerned in particular with the way in which tax-payer money and public funds are to be spent, a concern which relates directly to the Greek situation, as the citizens of these countries have contributed to past bailouts for Greece, and will fund any future financial assistance and possible debt forgiveness (the so-called „debt haircut") for the country. This factor, which is strongly tied to a scepticism about the ability of the Greek state and economy to reform and restructure, coupled with what was seen by many as the erratic, provocative and obstructionist attitudes and negotiating tactics employed by the Syriza government, led to a subsequent loss of trust and the hardening of attitudes among substantial segments of the citizenry of certain Eurozone states. Among these is Germany, which represents the economic powerhouse of Europe, and Slovakia and the Baltic states, which are smaller post-communist countries that have also gone through their own experiences of austerity and economic hardship. Here we shall briefly survey the attitudes of certain elements of the governments and general publics of these countries in relation to the issue of funding for a new bailout agreement for Greece in order to obtain a more complete and balanced picture of the present crisis in the Eurozone.

2. The German Response

Germany is without doubt the most important economy in the Eurozone and Greece's largest creditor (Taylor, 2015), and it can be said that often in reality the negotiations between Greece and her Eurozone partners were in essence actually between Greece and Germany. The official German attitude since the beginning of the Greek debt crisis in 2009 has been that it supports Greece's continued membership in the Eurozone, however, it expects deep and comprehensive reforms from the Greek side in return for financial assistance. However, what many saw as the anti-German rhetoric and actions of the Greek government, as well as its behaviour during the

protracted negotiations over the first half of this year, led to a subsequent loss of trust and a hardening of attitudes both on the part of the German government and the wider German public (Stevis & Thomas, 2015), which in many ways was exemplified by the strained relationship between the then Greek Finance Minister Yanis Varoufakis and German Foreign Minister Wolfgang Schäuble. The acrimony between the two sides perhaps reached its zenith when Schäuble suggested that Greece should temporarily leave the Eurozone for a period of 5 years in order to be able to receive debt relief and get its financial affairs in order (Martin, 2015). In the end, a new bailout agreement was reached which has been universally acknowledged as being very stringent and which represents a caving in and defeat for the Greek government in the face of the firm line taken by Germany and her supporters within the Eurozone, a firmness which it is believed was reinforced by the political events and trends in Greece since the election of the Syriza government (Kambas & Williams, 2015). As Slovak Finance Minister Peter Kazimir tweeted, „#Greece compromise we reached this morning is tough for Athens because it's the result of their „Greek Spring" #eurozone" (Slovak Finance Minister, 2015).

The German public on the whole responded very favourably to the tough stance taken by their government in the negotiations with Greece. According to one poll, 55% of Germans support the line adopted by Chancellor Angela Merkel, and in fact a third of those polled wished that she had taken an even tougher position (Bolton, 2015). It is also is very telling that after an agreement was reached with Greece, Chancellor Merkel and Finance Minister Schäuble soared in their approval ratings, with the latter reaching 70% according to one poll (Cullen, 2015). Furthermore, according to another poll, if elections were to be held in Germany now, Merkel's Christian Democratic Union would come close to winning an outright majority in the Bundestag, something which has not occurred since the days of Konrad Adenauer (Regina, 2015). Despite this, Merkel has faced strong internal opposition from certain quarters to any new bailout for Greece, with 60 lawmakers from her own government rejecting the deal in the Bundestag (Carrel & Rinke, 2015).

Another poll conducted in June which questioned Germans on Greece's continued Eurozone membership recorded that 53% wished to see Greece leave the currency union and only 29% actively supported Greece remaining, though a latter poll recorded in July saw this attitude soften somewhat, with 47% opposed to Greece remaining in the Eurozone, and 37%being in favour (McHugh, 2015). And very interestingly, while the general feeling and rhetoric in Greece in the aftermath of the new bailout agreement is that the country was defeated and humiliated by Germany and it sallies (Kambas & Williams, 2015), certain segments of the German media and public opinion believe that in fact the Greeks actually managed to fool the Germans and thus resent that fact that they will receive their money again in spite of what many of them view as months of provocation and hostility. For example, in the aftermath of the agreement the front page of Germany's most popular newspaper, *Bild*, proclaimed „Merkel Saves Greece With Our Money!" (Davidson, 2015) and another such headline from the same source also read „Tsipras laughs and we pay, pay, pay" (Scally, 2015).

3. The Baltic states' advice

Slovakia and the Baltic states represent very different sorts of countries to Germany, being considered as the „poorer" states of the Eurozone. When dealing with the attitude of their citizenry to the Greek situation, one frequently encounters two specific complaints. One is that they themselves have undergone harsh austerity measures in the post-communist period, having had no choice but to endure and accept them, and thus they lack sympathy for Greeks who protest such measures. The other is that they believe that Greeks, despite the crisis, enjoy a higher standard of living and receive higher wages than they do. Thus, many of them cannot understand why they must contribute their money towards any further financial assistance for Greece. For example, in one report from Latvia, a local woman said, „I think that the Greeks have to face up to the challenges that we experienced. They have to tighten their belts...I suffered during the crisis, too, and they have to accept the situation. I did, life goes on" (Deutsche Welle, 2015). In the same article, a certain Riga resident stated, „I think they're used to the good life and generous benefits ... I heard Greek pensioners complaining on the news that their pension was 2,600 euros...but now its 1,300. Well, 1,300 euros! If you compare that to our pensions of 300 and 400 euros – well, judge for yourselves!" (Deutsche Welle, 2015). In a report from Slovakia, a Bratislava resident said „I heard some Greeks have pensions over 1,000 euros ... a month. That's outrageous. I refuse to pay for their debt while they are making fortunes compared to my salary" (Ekathimerini, 2015). From Estonia, the editor of one of the country's leading newspapers stated that, „Estonians don't really understand the Greek attitude. We are used to saving and living frugally" (Ekathimerini, 2015). Regardless of the accuracy of such statements with regards to the Greek economic reality, they reflect a very widely held belief among many of the citizens of these countries that Greeks have a higher standard of living and more generous welfare system then their own, and thus they greatly resent the idea of having to help finance such as system.

The political leaders of these countries have also expressed frustration and a tough line towards Greece. During the course of negotiations Lithuanian President Dalia Grybauskaite said „If someone changes their options every week, to gain trust is not easy...Everyday costs a lot for Greece, especially for the Greek people" and that „for the Greek government everyday is mañana" (Szu Ping Chang, 2015). Estonian Prime Minister Taavi Rõivas also stated that „Trust is renewable but it doesn't happen very easily. Optimism is our moral duty but it's clear there it isn't much reason for optimism" (Szu Ping Chang, 2015). In relation to the issue of resistance to Greece having to adopt certain austerity measures Slovak Prime Minister Robert Fico made the statement that„If Slovakia managed to carry out reforms then Greece has to be able to do it, too, there is no room for mercy on our side" (Szu Ping Chang, 2015). Slovak Finance Minister Peter Kazimir, in the wake of Greece's July referendum, said that „With the result of the referendum, possible crisis scenario, the gradual withdrawal of Greece from the Eurozone, is unfolding", this being the first statement by a Eurogroup finance minister signifying that the „No" vote in the referendum

could lead to a so-called „Grexit" (Ekathimerini, 2015). And on the matter of the possibility of debt forgiveness, Prime Minister Fico even went as far as to say that it would be „immoral" to do such a thing and that „Greeks must pay a tax for how they behaved in the past" (Jancarikova, 2015).

Closing Remarks

Though it appears that Greece shall receive a new bailout and will continue to remain a member of the Eurozone for the time being, this will very much be on the terms of its creditors, terms which are based to a large extent on the concerns, interests, scepticism and exasperation of the citizenry and political class of the various Eurozone states. Based on the above analysis it can be concluded that one of the most important lessons to be learnt from the Greek crisis is that in such a structure as the Eurozone, with the interdependence that it causes for both powerful and weaker states alike, the democratic will of one particular nation cannot be discussed in isolation, as the democracy and will of all Member States and the way in which they wish to see their public funds spent must be taken into account and considered, and with decisions made accordingly. On a final note, it is worth remembering that unlike in Greece, there have been no referendums in the other Eurozone states asking citizens their opinion on bailout proposals for Greece or whether the country should remain a member of the Eurozone, and based on the above analysis, if they were to take place, the results would most probably not be positive and would most likely see Greece forced to leave the Eurozone.

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DOI 10.21868/PGnG.2016.1.2.

LEGAL CHALLENGES TO IMPROVE AND REFORM THE PRIVATIZED WATER SERVICES IN INDONESIA

Dodik Setiawan Nur Heriyanto·

Abstract: *Providing opportunity to the private sector to control water management system sled to complications. However, such control has been authorized by the national law of Indonesia under the influence of the World Bank during the 1998's crisis. This study explores two important conclusions: first, civil litigation against the private water sector should be an urgent legal step in order to improve the quality of water services. Second, in accordance with the spirit and philosophical meaning of water as a nation's welfare asset under the 1945 Constitution, remunicipalization seems to be a suitable way to reform Indonesian's water management control system.*

Keywords: legal efforts, privatization, water management, civil litigation, remunicipalization.

Introduction

Having the world's fourth largest population, Indonesia has enormous responsibility to take care of the wellbeing of all its citizens.[1] In order to provide clean and potable water, Indonesia trusted the water management system to the private sector. This water privatization process is regulated by the Law no. 7 of 2004 on Water Resources. This law authorizes local governments to conduct the privatization of water services through local regulation. As a consequence of the dominant private control in the water services sector, public health is at stake. There have been multiple fact finding reports about the inadequate quality of services and the bad quality of the water. Through analyzing normative and comparative legal approaches, this study found that privatization dictated by international influences during the economic crises was the root of the water services

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[1] The author would like to thank to Dr. Tamás Fézer as PhD supervisor for his time and tremendous contributions to support this writing process. Also, the author would like to thank to Dr. Tamás M. Horváth for the suggestions and ideas related to the public law approach on this study, especially about the 'remunicipalization' system that works very well in big cities in the world. Some legal documents in this paper were obtained from Indonesian Non-Governmental Organization sources, therefore the author is indebted to colleagues in Indonesia who are struggling to reach an effective water management reform.

problem in Indonesia. Moreover, this study also propounded effective ways to reduce past, recent, and upcoming water problems.

1. International Influence as a Core Element of the Water Problems in Indonesia

The privatization of the water services sector in Indonesia started in 1990 when the World Bank provided financial assistance to Indonesia in order to build water infrastructure in the country. With the help of the World Bank's loan, Thames Water Overseas Ltd. (a London based company) in partnership with Sigit Harjojudanto, one of the sons of Suharto (the second Indonesian President), and Suez Lyonnaise (a France based company) in partnership with Salim Group (owned by Anthony Salim, Suharto's crony) ran Jakarta's water system by dividing Jakarta's water management system into two equal parts for each partnership (Robles, 2007, 56.). The influence of the World Bank lasted until 1998 when the economic crisis resulted in the state budget's financial collapse and led the Indonesian government to adhere Policy Reform Support Loan issued by the World Bank with the debt amount of altogether 2.5 billion US$.[2] As a consequence of this, Indonesia must have complied structural adjustment programs of policy, institutional, regulatory, legal, and organizational reforms in the management of water resources and the irrigation sector under the World Bank's Water Resources Sector Adjustment Loan (abbreviated as WATSAL) (World Bank, 1999).

To implement the adjustment under the World Bank's conditions, Indonesia promulgated Law no. 7 Year of 2004 on Water Resource. This law reformed the substantial policy in water management and shifted it from government control to private management. Under this law, private sector enjoys tradable water rights (*hakgunausaha air*)[3], the right to develop and manage the potable water system[4], and to use the water resources for certain purposes in cooperation with state/locally owned enterprises.[5] The World Bank concluded that the provisions promoting privatization of water services under the new law ensured good climate for infrastructural provisions and investments creating stable economic development (World Bank, 2004, 5-6.). However, this new law brought independent activists into

[2] The Bank's *policy-based lending* to Indonesia is closely coordinated with the overall reform agenda that is underway with support from the IMF, ADB, Japan and our other development partners. There have been four adjustment loans to date: (a) The first *Policy Reform Support Loan (PRSL)* - $1 billion (approved and declared effective on July 2, 1998); (b) *Policy Reform Support Loan II (PRSL II)* - $500 million (approved May 27,1999 and made effective on June 17, 1999); (c) *Social Safety Net Adjustment Loan* - $600 million in two tranches (approved May 27, 1999 and to become effective in the last week of January, 2000); and (d) the *Water Sector Adjustment Loan* - $300 million in three tranches (approved May 27, 1999, effective and first tranche released in June 1999). *See* Indonesia: Macroeconomic Update (2000), http://siteresources.worldbank.org/INTEAPHALFYEARLYUPDATE/Resources/550192-1101735670271/indonesia.pdf, accessed October 12 2015.

[3] Indonesian Law No. 7 Year 2004 on Water Resources, art. 9 (1).

[4] *Ibid.,* art. 40 (3).

[5] *Ibid.,* art. 45 (3).

the streets protesting against the privatization of water services on the grounds that it would result in worse access to clean water in poor communities and, therefore, higher costs must be paid for the water.
After the enactment of Law no.7 of 2004, there has been a growing trend in the privatization of water services at regional levels. In 2004, the Government planned to privatize 250 Indonesian Local Water Utility Companies (*Perusahaan Daerah Air Minum*) in 27 provinces using the World Bank's financial support (Wignyosukarto, 2005). Such privatization mechanisms are regulated by local law as provided by Law no. 7 of 2004.[6]
Factual evidence proves that after the privatization, water management problems got bigger and more complex: higher water tariff than in the neighbouring countries (Indonesia: 0.7 US$/m3, Singapore and the Philippine: 0.35 US$/m3, Malaysia: 0.22 US$/m3, and Thailand: 0.29 US$/m3)[7] and the fact that only 47.71% of Indonesian citizens get access to clean water (Direktor at Pengkajian Bidang Sosialdan Budaya, 2015, 51.). Moreover, in the upcoming years climate change and the growing number of people are predicted will most likely support the water deficit factor (Indonesian Ministry of Environment, 2015).[8] If it does happen, then social conflicts generated by the water crisis could be unstoppable (Arsyad & Rustiadi, 2008, 95-96.; Green, 2002; Indonesian Ministry of Environment, 2014).

2. Legal Efforts to Overcome the Water Problems

In order to solve the complicated water problems in Indonesia, two suggested options may be feasible: overcoming poor services provided by the private sectors through civil litigation, and reforming the national concept for water management systems from privatization paradigm into the 'remunicipalization' concept.

2.1 Urgency to enforce the private sector through civil litigation

After having analyzed government's actions to overcome the water problems, we must conclude that these instruments are not capable of solving the water management problems through fast and fair settlement. Even though there was a renegotiation contract in 2001 between the locally owned company PDAM DKI (Jakarta) and its private partner (PT. PAM Lyonnaise Jaya (France) and PT. Thames PAM Jaya (England) (Hadipuro & Ardhianie, 2011, 1-3.; Koalisi Rakyat untuk Hakatas Air, 2011), water

[6] Indonesian Law No. 7 Year 2004 on Water Resources, art. 16, 17, and 18.
[7] Water tariff in Jakarta is 7.200 IDR (similar 0.7 USD) per cubic meter ranked as the highest charge in South East Asia and water quality is still questionable. Compare with other ASEAN countries, with only tariff charge 0.35 USD/m3, water in Singapore is drinkable. *See* Expert (2015): Water Tariff in Jakarta Highest in South East Asia (2015), http://en.tempo.co/read/news/2015/01/11/057634142/Expert-Water-Tariff-in-Jakarta-Highest-in-South-East-Asia, accessed October 20 2015. TarifTermahal Se-ASEAN, Kualitas Air Murahan (2010), http://news.detik.com/lapsus/1292196/tarif-termahal-se-asean-kualitas-air-murahan, accessed 20 October 2015.
[8] Indonesian Ministry of Environment predicts that in 2025, there would be no enough clean water supply because of unresolvable of water management problems.

tariffs still remained expensive and not accessible to poor communities.[9] So far, the numerous protests claiming responsibility of the service providers did not make the government to provide an efficient response. Apparently, the insufficient rules of business accountability and transparency drive providers in the private sector to focus on gaining profit rather than developing the quality of their poor services.[10] Nonetheless, Law no.7 of 2004 shows a clear legislative effort to overcome the water management problems: people could start lawsuits based on the poor quality of water services that have an adverse impact on their life.[11]

Instead of demonstrations, civil litigation would obtain the government's attention. Lawsuits also have legislative support under Article 82 (f) of Law no.7 of 2004, and various reports also reveal the poor quality of water services in Indonesia. A recent lawsuit was brought by KMMSAJ, the Coalition of Jakarta Residents Opposing Water Privatization in order to terminate the contract between PAM JAYA and its private partner. The District Court of Central Jakarta accepted their claim in 2015 and declared all agreements (including the amendments) between PDAM DKI and its private partner null and void.[12] Subsequently, the government that was one of the defendants in the case recently appealed against this decision. The majority of people argue that the government's appeal proves their unawareness of the water problems.

The civil lawsuit against the privatization before the Central Jakarta District Court could be a precedent for other similar actions to make providers in the private sector manage a better local water management system. In accordance with the Law no. 7 of 2007, all agreements on privatization of local water services that cause adverse impact to the local community must be terminated through civil litigation, and/or water services clients could even claim monetary compensation[13] for the poor water quality that had caused health problems.[14] After private sector providers realize that their poor services could be challenged in Court, they would probably pay more attention in order to develop the quality of their services.[15] Litigation however is a last resort. In order to avoid civil lawsuits, the central and local governments should review their privatization policies.

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[9] *See Supra* note 7.

[10] Study found in 2013 that 174 from 350 or in amount 50% of local water companies reported in giving unsatisfactory service. Indonesian Ministry of Public Work (2013), Daftar Kinerja PDAM, 2013, http://www.bppspam.com/index.php?option=com_content&view=article&id=652&Itemid=98, accessed October 26 2015.

[11] Indonesian Law No. 7 Year 2004 on Water Resources, art. 82 (f).

[12] Central Jakarta's District Court No. 527/PDT.G/2013/PN.JKTPST, 24 March 2015.

[13] Indonesian Civil Code, art. 1365 (Every illegitimate act, which causes damage to third parties obliges the party at fault to pay the damage caused).

[14] Less quality of water in big cities are one of the reason of degradation of public health in Indonesia. University of Indonesia Center for Health Research, *Survei Rumah Tangga Pelayanan Kesehatan Dasar di 30 Kabupaten di 6 Provinsi di Indonesia 2005*. USAID - Indonesia Health Services Program, Jakarta. 2006.

[15] Most of private sectors serve in big cities other than DKI Jakarta, the capital city of Indonesia.

2.2 Remunicipalisation

Encompassing water management services through privatization indeed led to more disadvantages[16] than the expected positive outcomes (Chinn & Web, 1987, 39-41.). The local governments are having authority to privatize water management services often support their decision of privatization with the idea of expected cost savings, while this initial cost saving dissipates overtime, especially where there had been limited competitive bidding in the first place (Gormley, 1991, 308-309.). Moreover, the objective of privatization, serving community interest, has been only a secondary interest of the privatized enterprises (Langmore, 1987, 44.). Several studies found that there was 'no-social justice' in privatized water services (Mulreany*et, 2006, 29-31*.): increasing prices and the lack of guarantees to provide access to poor communities.[17]

Considering the actual disadvantages of privatization, this study recommends the government, both central and local, to dissertate a 'remunicipalization' policy in water management services. There have been success stories in several cities –in Paris (France), Dar es Salaam (Tanzania), Buenos Aires (Argentina), Hamilton (Canada), and some Malaysian municipalities (McDonald, 2012, 18.). The French water remunisipalization management system intended to tear inequality that the rich pay for the poor (Barraqué, 2003, 200.). Financially, there were significant direct savings for most municipalities – some 35 million Euro in the first year of the remunicipalization in Paris, and about 6 million CAD in the first three years in Hamilton – some of which were realized immediately after the profit taking for private management fees had been removed (McDonald, 2012, 13.).

Remunicipalization would preferably be suitable and may work very well in Indonesia in the water management sector. This idea can be supported with three important reasons:

1) Remunicipalization reassures the implementation of article 33 paragraph 3 of the Indonesian Constitution: "the land, waters, and natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people". In contrast, the privatization of water services is clearly against the aim and spirit of the Constitution. A study found that remunicipalization typically improved access and quality of water services (PSIRU, 2014). Public management through remunicipalization of water will confidently protect the aim of the Constitution.

2) In accordance with the first reason, the Constitutional Court provides a conditional interpretation of article 33 paragraph (3) of 1945 Constitution in correlation with water management under Law

[16] *See Supra* note 12.

[17] Bayliss explains that privatization has had a negative impact for poor in terms of unemployment, decrease in income, and reduced access to basic services. Bayliss, K. (2002). Privatisation and Poverty: The Distributional Impact of Utility Privatisation. Annals of Public and Co-operative Economics. 2002, 73 (4) 603, pp. 603-604. *See* also Birdsall, N. & Nellis, J. (2002). Winners and Losers: Assessing the Distributional Impact of Privatization. World Development 1617. 2002, 31 (10), pp. 1618-1620.

no.7 Year of 2004.[18] The Constitutional Court declared five restrictions on the interpretation: first, any concession on water must not violate the people's right to get water, therefore it must be controlled by the state and intended for the greater welfare of the people. Second, the state must ensure the people's right to water because access to water is a basic human right. Third, the use of water should be based on environmental sustainability. Fourth, the state has absolute nature to supervise and control the water sector because water is an important branch of production and serves the people, therefore it should be owned by the state and used for the people's welfare. Fifth, the main priority of the public enterprises and locally owned enterprises in is to engage in water concessions as a continuation of the right of the state to control the water and it is related with people's wellbeing.[19] Changing the paradigm of Law no.7 of 2004 from privatization to remunicipalization would conditionally meet the five interpretations of the Constitutional Court. Therefore, amendment of the law is necessary and legislators must take remunicipalization into consideration when doing so.

3) After experiencing two financial crises in 1998 and 2008, the Indonesian economy recently recorded a relatively strong growth, and this firm pace of economic expansion has been accompanied by reduced output volatility and relatively stable inflation (Elias & Noone, 2011). Moreover, Indonesia has paid all of its debt obligations to the World Bank and IMF, and it is becoming an active member of IMF, and assigned a quota in IMF (IMF Rankles Again, 2015; Polemik Utang IMF, 2015). According to his, Indonesia has no further obstacles to change its policy to remunicipalization turning water management back into an area of public municipal managements.

Conclusion

Privatization scheme under the Law no.7 of 2004 led to unbalanced situations and disadvantages. Factual researches found that the privatized water sector created higher water tariffs compared to the neighbouring countries, and more than 50% of the Indonesian citizens do not get proper access to clean water. This evidence is in contradiction with the spirit of the principle that declares water as '*res communis omnium*' that should be under the power of the state that must use it for the greatest benefit of the people as it is ordered by the Indonesian Constitution. Therefore, legislative efforts must be taken in order to maintain the real purpose of water services under the Constitution: first, it is urgent to enforce the private sectors' better performance through civil litigation. Supported by Law no. 7 of 2007, all agreements on privatization of local water services that cause adverse impact to local communities must be terminated through civil litigation,

[18] Constitutional Court Judgment No. 85/PUU-XI/2013.
[19] *Ibid.* pp. 138-139.

and/or water services clients could even claim monetary compensation for the poor water quality that had caused health problems. Second, adopting the system of remunicipalization for water management services would effectively solve adverse water problems. The remunicipalization system has a purpose that meets the spirit of the Constitution, and since the IMF and the World Bank have no more dictates to Indonesia, we feel that this is the right time to place the water services back under public control.

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DOI 10.21868/PGnG.2016.1.3.

EUROPA VS. USA
DELAY AND THE AVIATION INDUSTRY

Nikolett Zoványi·

Abstract: *Because of information asymmetry in the aviation sector passengers and air carriers will never be in possession of the same facts. Passengers are exposed to carriers when they are waiting for their flights. That is the main reason why the legislative bodies have to take care of passengers by providing them rights against carriers, although there is a significant difference in the method of regulation in the United States of America and the European Union. This essay intends to point out some of them.*

Keywords: aviation, ECJ, Montreal Convention, air passenger rights

Introduction

Aviation became a wildly accepted form of travel and transportation during the 20th century. State legislative bodies realized that operating aircrafts and conducting activities in the aviation business qualify as dangerous activities, so the aviation sector needed a set of safety and liability rules to guarantee safety to passengers. In 1929 a conference was held in Warsaw where participating states adopted an international convention about the unification of certain rules relating to international carriage by air. Over the years, more than 130 states ratified the convention. In 1999 the Montreal Convention revisited the Warsaw Convention rules and implied minor changes in its text. Although there are multiple legislative products in both the international and domestic level related to aviation, in the beginning of the 21st century a new approach came into the picture. This new phenomenon is the recognition of passenger rights, whether states should provide more powerful rights to passengers and protect their interests during the flight.

1. Latest Trends in Air Passenger Preferences

9/11 was a big turmoil in the aviation sector too, and air traffic decreased significantly as a consequence of the attacks.

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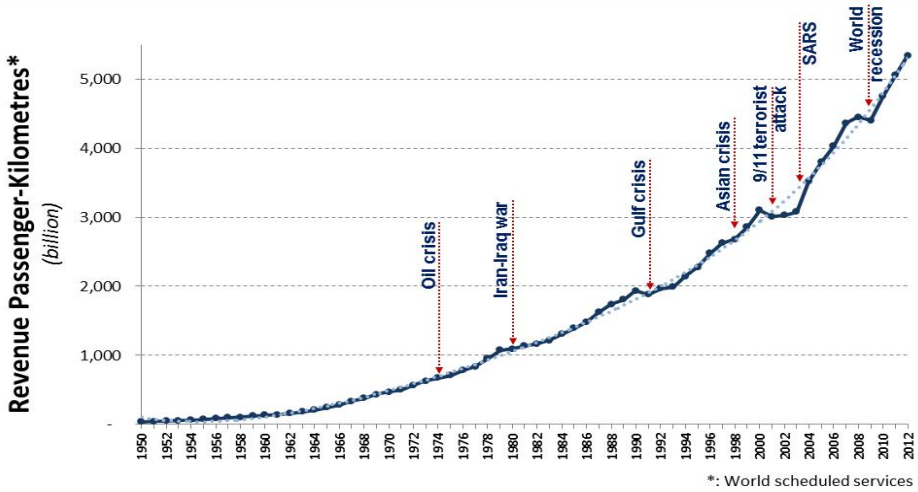
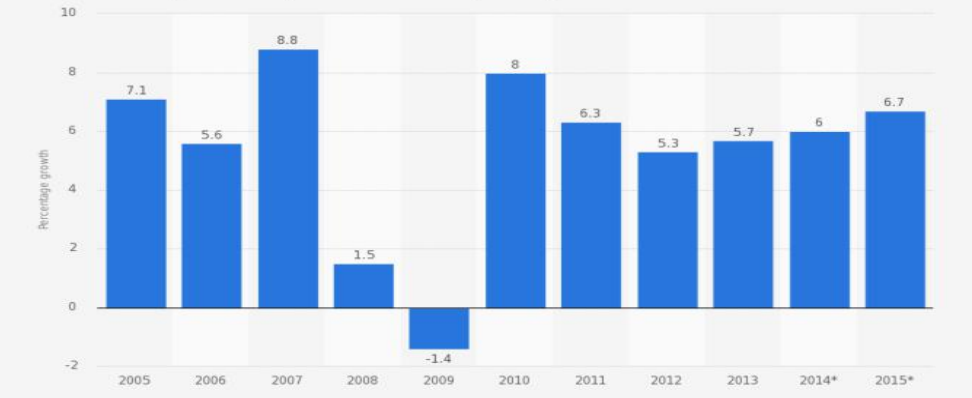
Figure 1
The World Aviation – 1950 to 2012



Source: International Civil Aviation Organization:
World Aviation and the World Economy

It took a couple years until finally everything got back to normal, and the intensity of air travel even superseded its past results.
In the European Union more and more people prefer flights to train or car travel, and we may experience the same in the United States too. Aviation is one of the busiest and safest way to travel. Carriers compete to each other in order to convince millions of passengers to choose their services. In this heavy competition, passengers may suffer harm by carriers in the form of breaching the travel contract. Based on this assumption, the European Union's legislative bodies enacted new rules for events like cancellation, delay and overbooking. Carriers shall pay a fix amount of compensation unless they successfully prove defenses. In the meantime, passengers are kept on board the plan for hours waiting to take off in the U.S. and they get nothing in terms of services or compensation.

Figure 2
Annual Growth in Global air Traffic Passengers Demand from 2005 to 2015



Source: IATA, ICAO, Federal Aviation Administration;
Statista - The Statistics Portal 2015

2. Air Passenger Rights in the EU

This essay focuses on these situations and the development of passenger rights comparing the two systems to prove the European Union places more emphasis on the protection of passengers' interest and operate a more passenger friendly service system than the federal government of the United States.

In order to prove that the European Union gives more power to passengers, I would like to demonstrate how air carriers might exonerate themselves from liability using recent case law of the European Court of Justice. In case a flight was delayed or cancelled under the scope of the 261/2004/EC Regulation, it does not automatically mean that the carrier must pay compensation. The airline is obliged to do so only if the passengers reached their destination at least 3 hours later than it was originally scheduled, and there were no any extraordinary circumstances. First of all, we should clarify what time counts as relevant under the term "time of arrival". We may list four different circumstances that may qualify as "time of arrival". These events are the following:

- the time that the aircraft lands on the runway ("touchdown"),
- the time that the aircraft reaches its parking position and the parking brakes are engaged or the chocks have been applied ("in-block time"),
- the time that the aircraft door is opened,
- a time defined by the parties in the context of party autonomy.

There could be slight differences in these referred moments, and these several minute differences should decide whether the air carrier has breached the contract and, therefore, it is obliged to pay compensation to passengers. In the German wings GmbH versus Ronny Henning case (C-452/13) the European Court of Justice got the opportunity to interpret this question and the underlying provisions. According to the ECJ, the time that the aircraft door is opened should be relevant in such cases as passengers may feel the end of the journey at that time. This is when the physical opportunity to leave the plane opens to all passengers.

After the question of breach of the contract has been decided, the airline may look for defenses and state that one of the following extraordinary circumstances was the underlying cause of the delay or the cancellation: political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings, strikes that affect the operation of an operating air carrier and air traffic management decision.

In the essay I would like to analyze two of the six available defenses, namely the meaning and interpretation of the unexpected flight safety shortcomings and meteorological conditions incompatible with the operation of the flight concerned. They both seem to offer easy defenses under liability, however they are more complicated according to the recent case law of the European Court of Justice.

In order to get the true meaning of unexpected flight safety shortcomings, we have to examine two cases: the Friederike Wallentin – Hermann versus Alitalia – Linee Aeree Italiane SpA case (C-549/07) and the Sandy Siewert, Emma Siewert, Niele Siewert versus Condor Flugdienst GmbH case (C-

394/14). In the first case Alitalia airline had some trouble with the engines and the plane delayed 24 hours. In the second case the flight was carried out with a six and half hours delay which was occurred because the aircraft which was due to operate the flight at issue had been damaged the previous evening at Stuttgart Airport. A set of mobile boarding stairs had collided with the aircraft, causing structural damage to a wing and, as a consequence, the aircraft had to be replaced. The two most important questions the court examined weather the airline could not, on any view, has been avoided the extraordinary circumstances by measures appropriate to the situation — that is to say, by measures which, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable for the air carrier concerned[1] and the circumstances surrounding such an event can be characterized as 'extraordinary' within the meaning of Regulation only if they relate to an event which is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin.[2]

Seeking for the interpretation of meteorological conditions incompatible with the operation of the flight concerned, I would like to demonstrate the Denies McDonagh versus Ryanair Ltd. case (C-12/11). Ms McDonagh booked a flight with Ryanair scheduled for 17 April 2010, for EUR 98. On 20 March 2010, the Eyjafjallajökull volcano in Iceland began to erupt. On 15 April right after the volcano entered an explosive phase the authorities closed the airspace over a number of Member States because of the risks to aircraft. Ms McDonagh flight was cancelled as well. During the period between 17 and 24 April Ryanair did not provide Ms McDonagh with care in accordance with the detailed rules laid down in Regulation.[3] So the question was weather such a meteorological condition like a volcano eruption can be qualify as such *vismaior* circumstances in which airlines do not have to pay compensation and prove sufficient and reasonable care for their passengers. The ECJ stated the volcano eruption was a force majeure so the airline was not liable for delay in such cases, however it should have provided care of passengers event under such circumstances. That means airlines have to pay for accommodation and take reasonable care of passengers, in other words they have to cover the passenger's meals and hotel bill until they can fulfill their obligation and transport the passengers to the desired and contracted place of arrival.

Conclusions

Such a rigorous approach to the available defenses for air carriers may easily change the structure of competition in the European aviation market. It may have a significant impact on not only the ticket prices but on the mentality of passengers. We can already experience a change in passenger attitude. More and more disputes are carried out against airlines due to

[1] Judgment in Eglītis and Ratnieks, C− 294/10, paragraph 25
[2] Judgment in Wallentin-Hermann, C-549/07, paragraph 23
[3] Article 9, Regulation No 261/2004

insufficient services, and national courts are obliged to follow the interpretation of the ECJ as the Regulation shall be applied the same way in all Member States. The strict rules on passenger rights in the European market may also induce a change in the U.S. as well, and the competitiveness of American and European airlines may also suffer consequences of this improving concept of passenger rights in Europe.

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C− 294/10 Eglītis and Ratnieks case

C-549/07 Friederike Wallentin – Hermann versus Alitalia – Linee Aeree Italiane SpA case

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

DOI 10.21868/PGnG.2016.1.4.

THE GREAT GREEK AUCTION
THE PRIVATIZATION OF UTILITIES AND ASSETS IN GREECE

Daniel Haitas[·]

Abstract: *With the onset of the Greek financial crisis in 2009 and the subsequent need for bailouts and loans from foreign creditors, Greece's publicly owned assets and state-run services were brought into focus and became the target for reform, restructuring and privatization. This received a new and drastic impetus last year as a result of the latest bailout agreement between Greece and its creditors, which requires that the country implement a wide-ranging privatization program to the value of 50 billion euros. Here we shall briefly overview the examples of water supply, electricity, and ports, all of which have been explicitly mentioned and singled out with regards to Greece's privatization push and attempts to reform state structures.*

Keywords: Greece, financial crisis, public services, bailout, water supply, energy sector, privatization of ports, state-owned companies

Introduction

With the onset of the Greek financial crisis in 2009 and the subsequent need for bailouts and loans from foreign creditors, Greece's publicly owned assets and state-run services were brought into focus and became the target for reform, restructuring and privatization. This received a new and drastic impetus last year as a result of the latest bailout agreement between Greece and its creditors, which requires that the country implement a wide-ranging privatization program to the value of 50 billion euros (Kottasova, 2015). Here we shall briefly overview the examples of water supply, electricity, and ports, all of which have been explicitly mentioned and singled out with regards to Greece's privatization push and attempts to reform state structures.

1. Privatization of Water Supply

Greece has substantial water resources amounting to 58 billion cubic meters per year (Josephs, 2015). The country's two major suppliers of water, EYDAP in Athens and EYATH in Thessaloniki, are considered efficient overall in their operations (Kishimoto & Hoedeman, 2015). As a result of

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Greece's economic crisis, the conservative government of Antonis Samaras (2012-2015) planned to privatize both EYDAP and EYATH, and interest was expressed in such a possibility by various foreign investors (Yallouros, 2014). However, this plan provoked considerable public opposition (Kishimoto & Hoedeman, 2015). The Council of State, Greece's highest administrative court, in a 2014 decision stopped the privatization of a substantial amount of EYDAP, basing their ruling on the grounds that such an action might put public health at risk (Kishimoto & Hoedeman, 2015). In that same year a non-binding referendum was also organised and held in Thessaloniki with 218, 002 participants, 98% of which voted against the privatization of the city's water provider (Kishimoto & Hoedeman, 2015).

18. Thessaloniki Water Supply & Sewerage S.A. (EYATH)
EYATH SA has the exclusive right to provide water and sewerage services in the Greater Thessaloniki Area through a 30-year exclusive concession agreement with the Hellenic Republic, effective from 2001.

Privatisation Method	Advisors	Current Status	Next Steps – Main Issues
Sale of 23% of share capital. HRADF currently holds 74% of the shares.		Previous privatization attempt for the sale of 51% was put on hold based on the decision by the Council of State regarding the similar privatisation of EYDAP. According to the Court decision, the state should retain at least 50% plus 1 share in EYDAP, so only a minority stake can be sold.	Next Steps • HRADF to engage advisors • Assessment of alternative options for the sale of 23% of the shares • Improvement of the regulatory framework and adoption of a revised Concession Agreement by the Company and the HR

19. Athens Water Supply & Sewerage S.A (EYDAP)
EYDAP has the exclusive right to offer water and sewerage services in the Greater Attica Area. The term of this right, as well as its renewal, is regulated by a a 20-year Agreement signed by the Hellenic Republic and EYDAP in 1999.

Privatisation Method	Advisors	Current Status	Next Steps – Main Issues
Sale of 11% of the shares. HRADF holds 27% of the shares.		According to decision by the Council of State concerning the legality of the transfer of the shares to the HRADF, the transfer of 34,0033% of EYADAP shares has been canceled. Therefore, HRAADF owns 27% of EYDAP shares and the HR 34%. According to the Court decision, the state should retain at least 50% plus 1 share, so only a minority stake can be sold.	Main Issues to be addressed 1. HR and HRADF to request return of capital to shareholders, as provided in corporate law. 2. HRADF to engage advisors.

Source: Asset Development Plan issued by the Hellenic Republic Asset Development Fund (July 30th, 2015)

There have been complaints of hypocrisy in relation to the push for Greece to privatize its water supply. George Archontopoulos, president of the Thessaloniki water company trade union, claimed that it is in fact a case of the Germans adopting a hypocritical „do as I say, but not as I do" approach to the issue (Mathiesen, 2015). The reason for this claim is the fact that in recent years there has actually been a move towards governments buying back water utilities in certain parts of Europe, such as in Germany and France (Mathiesen, 2015). Furthermore, there has been the criticism that overall the water supply system in Athens and Thessaloniki works fairly efficiently, thus calling into question the need to privatize (Mathiesen, 2015). In fact, it is said that the companies themselves are able to independently modernise their services and supply networks without the help of further private capital (Parliamentary questions to the Commission, 2013). Thus, it is claimed that the privatization has nothing to do with improving the provision of services, and everything to do with, in the words of one expert, „fiscal reasons" (Parliamentary questions to the Commission, 2013). However, despite such misgivings and opposition, under the terms of Greece's most recent bailout agreement with its creditors, Greece is to sell off large amounts of its water utilities in both Athens and Thessaloniki. According to the terms of the bailout, 11% of EYDAP shares are to be sold off, which in reality means that 49.7% of the utility would be in private hands, as 38.7% of its shares are already in the ownership of private

individuals and companies (Kishimoto & Hoedeman, 2015). In relation to Thessaloniki's EYATH, 23% of state-owned shares should be privatized, which means that on the whole 49% of the company's shares would be in private hands (Kishimoto & Hoedeman, 2015). Though these figures mean that officially private investors would not have majority ownership over the companies, something explicitly prohibited by the 2014 Council of State's decision, in fact, at such high levels of privatization, some believe that they would effectively gain management control over the two companies (Kishimoto & Hoedeman, 2015).

2. Energy Sector Reforms

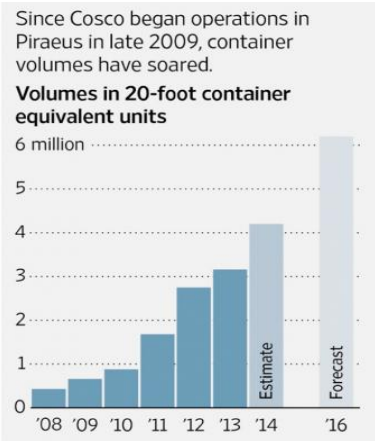
A further condition of the latest bailout agreement is that Greece must make „irreversible reforms" in the power and energy sectors, with a particular focus upon ADMIE, the country's electricity transmission company (Lewis, 2015). Greece's largest electric power company is the Public Power Corporation (DEI), which produces 80% of Greece's power output (Adamopoulos, 2015), 51% of which is currently state-owned, with the remaining amount being held by private interests (Adamopoulos, 2015). Though officially ADMIE is owned by DEI, it acts as a separate company with its own independent operations and structures (Adamopoulos, 2015). The Samaras government had planned to carry out privatizations in this area, which attracted interest from such countries as Italy, China, Canada and Belgium (Tsagas, 2015). However, such measures were opposed by the government of Alexis Tsipras and so progress in this area came to a halt (Lewis, 2015).

A major criticism of the provision of energy services in Greece is its monopolistic nature and that it does not facilitate competition, but rather discourages it, and that in fact various Greek governments have actively supported the status quo (Tsagas, 2015). The desire to alter this state of affairs also can be related to the aim of creating a single EU energy market (Lewis, 2015) for purchases, supplies and consumption, and thus lower the cost of energy and diversify its supply (EU Commission, 2015).

According to the details of the latest bailout agreement, ADMIE should either be privatized or a solution should be found that would have an equivalent effect on competition (Makris, 2015). Despite this, the Greek government initially denied that there were plans to undertake a privatization campaign of ADMIE in the near future, and it sought alternative methods, which would have simultaneously avoided privatization while allowing for more competition in the energy sector (Adamopoulos, 2015). One such solution proposed by Minister Skourletis was for ADMIE to be removed from DEI's jurisdiction, without it being privatized (Adamopoulos, 2015). Eventually an agreement was reached with Greece's creditors, which entails the Greek state retaining 51% ownership of ADMIE, with 20% to be bought by a strategic investor, while a further 29% will be floated on the Athens Stock Exchange (ADMIE, 2015).

3. Chinese Investment in the Greek Ports

Another program originally planned by the Samaras government but subsequently put on hold due to the initial strong opposition of the Syriza government is the privatization of the Ports of Piraeus and Thessaloniki (Ekathimerini, 2015). Greece has the European Union's longest coastline and possesses the largest number of islands, and along with them a large number of ports (Corres & Papachristou, 2013). The Port of Piraeus is the largest port hub in the country and accounts for 85% of Greece's passenger movements and cargo, while Thessaloniki is the second largest, and is geographically significant within Europe (Corres & Papachristou, 2013). The Port of Piraeus was generally considered to have had an out dated infrastructure and to have been inefficient (Granitsas & Paris, 2014), and the structure of its labour relations was considered cumbersome (Alderman, 2012). This changed, however, when the Chinese company COSCO became the operator of two of Piraeus' cargo piers in 2008, which led to an enormous boost in output and efficiency, and has generally been seen as a great success story (Smotlczyk, 2015), with the port becoming one of the fastest-growing and biggest in the Mediterranean (Granitsas & Paris, 2014). COSCO expressed strong interest in gaining majority control over the entire port and was greatly concerned over Syriza's initial opposition to privatization (Smotlczyk, 2015). In the aftermath of the new bailout agreement, the Tsipras government began pressing ahead with the port privatization program, despite their initial opposition to it (Newton, 2015). The deadline for tenders for the privatization of the Port of Piraeus was set for the end of October last year and for the Port of Thessaloniki the deadline is the end of March 2016 (Reuters, 2015). With regards to Piraeus, it was China's Cosco Group that was successful in its bid, receiving approval from the Hellenic Republic Asset Development Fund to obtain a 67% share in the port (Ship-Technology, 2016).



Conclusions

National governments, ideally, should have the ability and will to organise the state and its structures according to the best interests of the country and its citizenry. This means that at various times the provision of certain services and assets should either remain in public hands or be privatized partially or completely, depending on what is most likely to lead to beneficial and successful results. In the case of Greece, in light of the developments over the last few years, it can be said that irresponsible administrative, economic and fiscal practices over recent decades have now led essentially to a loss of national sovereignty to a certain degree and of the ability of Greeks to decide in which way their country and its public administration should be ordered and structured. This is not to say that the

movement towards privatization and restructuring in Greece is in itself a negative thing; on the contrary, in certain areas it has been necessary and vital. Indeed, with regards to ports we see that COSCO's operation in Piraeus has been overwhelming successful and beneficial. However, on the other hand, we can observe that in relation to the question of the privatization of water supply that the need now for the country to reach certain fiscal targets and fulfil its responsibilities to its creditors may lead to decisions and actions that may not necessarily be the most beneficial in terms of the ordering of the state and the provision of services to its citizens.

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DOI 10.21868/PGnG.2016.1.5.

CONTRACTING OUT PUBLIC SERVICES TO NGO PRACTICES IN ASIAN COUNTRIES

Dodik Setiawan Nur Heriyanto·

Abstract: *In Asian countries, contracting out public services to Non-Governmental Organization (NGO) has been recognized as usual practice to support government function. This study found that their contractual agreement with the government strikes the nature of NGO as self-governing institutions, non-profit orientation, and independency.*

Keywords: NGO, public services, Asian Countries

Introduction

The term of "Non-Governmental Organization" or generally abbreviated as NGO has been firstly recognized as universal designation for private and independent organizations working for non-profit outcomes since the enactment of the United Nations Charter 1945.[1] Up to present, the works of NGO are diverse in many areas not only limited with their involvement in the United Nation's forum. They even play an essential role in social and economic development of a state.

Activities of NGO must be independent from any government's influence. They shall not work for political and commercial advantages. Yet, since there has no basic boundaries of their structure and role, many NGOs work to carry out government functions and it has been practiced in some Asian countries like China, Pakistan, Cambodia, and Indonesia. Unfortunately, contracting out certain public services to NGO challenge their nature as independent organization.

1. Relationship between Government and NGO (Practice in Asian Countries)

The nature of NGO activities is basically neither operating by government nor driven by profit goals. With this characteristics, most scholars agree to

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[1] See article 71 the United Nations Charter 1945. In the charter, the term of 'NGO' is actually to differentiate with the term "specialized agencies" as organizations with varying degrees of independence that agree to coordinate their work through agreements with ECOSOC.

personalized them as 'the agent of development'[2] to fix the problems that have befallen the development process (Edwards & Hulme (eds.), 1996, 3.). Because of refusing government influence (Fisher, 1997), NGOs have distinct mind sets and attitudes that lead them to be more flexible in tackling multi sector issues of development with the grass-root movement or even direct actions that have an impact upon government policy-making. Their voice which usually speaking out against the government policy also have legitimacy in the eyes of public. Public legitimacy, the greater source of NGOs spirit to survive, naturally exists from their pure mission to stand up with public interests.

In the developing world, NGOs are also often in partnership along with the government working to increase development through different channels and activities. Their opposing position against deviate policy of the government indeed reflects the balancing effort for true democracy. However, in certain circumstances NGO substitutes state presence in protecting social rights and other vulnerable segments such as reducing carbon emission, protecting wild animal, peace building mission, and etc. A good cooperation between NGOs and government is potential motivation to increase the development of state while the NGOs fill the gap on the government's failure to target major societal problems.

Generally, a state has obligation to provide public services to the society but sometimes their services could not reach effectively to the society because of common bureaucracy obstacles (such as less productivity, financial constraint (inefficient), and lack of qualified governance). This study found that in some Asian countries, contracting out public services to NGO has been practiced as preferential tool to reach the public sector objectives. In Pakistan, the lack of government capability to provide healthcare services is the leading ground of the government to outsource the administration of primary health care services to NGOs. The contracted NGOs to carry out public health care services in the district of Rahim Yar Khan demonstrate their ability to improve the utilization of the existing Basic Health Units (BHU), physical conditions, availability of drugs, and staff punctuality (World Bank, 2006; Tanzil – Zahidie – Ahsan – Kazi – Shaikh, 2014, 277.).

Since 1990 contracting out social services to NGOs has been carried out by local governments in China mostly in urban areas (Shanghai, Beijing, Guangzhou, and Shenzhen) (Xijin & Ming, 2009, 6.). The Purchase of Service Contracting (扩大购买服务 - *kuodagoumaifuwu*) has been increasingly applied to meet demands of public services including education, public health, elderly services, handicapped services, community services, employment, city planning, as well as cultural activities (Chan, 2015, 10.; Teets, 2012, 17-20.) that shifting the role of the government in public services from being a direct provider to a public resources coordinator. For instance,

[2] Some scholars also specified NGOs as agents of the democratization. See Clark, J. (1991), *Democratising Development: The Role of Voluntary Organizations*. Earthscan, London. 1991, p. 5.; Fowler, A. (1993), NGOs as Agents of Democratization: An African Perspective. Journal of International Development. 1993, 5 (3); Jenny Pearce views NGOs as facilitators of development process rather than as agents of change. See Pearce, J. (1993), NGOs and Social Change: Agents or Facilitators? Development in Practice. 1993, 3 (3), p. 224.

in Shanghai, NGOs are performing as the operator of socialized elder care affairs and the performer of community elder server while at the same time the local government is acting as policy maker, service designer, public financial supporter, and public elder services buyer (Yu, 2014, 156.).
Having position as the poorest and least healthy countries in Southeast Asia (Jacobs & Price, 2006, 27-39.; Levine & Gardner, 2008, 1.), to increase the access of affordable health care starting 1998 Cambodia tendered management of government health services to NGOs (Deolalikar – ShikhaJha – Quising, 2015, 170.). Moreover, funded by the Asian Development Bank and the World Bank, Cambodia established a pilot policy 'Contracting of Health Service Project' undertaken between 1999 to 2003 to provide district health services in selected districts that encompassed 1.26 million populations (Bhushan – Keller – Schwartz, 2002, 1-3.). A study conducted by Jarrah (2008) found health centres that contracted out by NGOs were achieved a higher percentage of the catchment population's need. In addition, she also argued that contracted health centres, whether located in rural or urban areas, performed better than the non-contracted government facilities.

2. Dilemmas in Contracting Out Public Services to NGOs

As previously discussed, we do understand that contracting out public services to NGO provides greater advantages and effective achievements.[3] However, tendering public services to NGOs through a contractual agreement will result legal dilemmas that undermine the nature of NGO. This contractual agreement has no profit gain but in fact threatening their independency. In water service contract practices, for instance, NGO is under pressure with the contractual requirements. The pressure is on NGOs to become increasingly commercial in order to implement their contracts efficiently (Clayton, 1999, 20.).[4] The position of NGO in doing such commercial activities would question their position as voluntary organization. The output of contracting out to deliver certain services to NGOs would make them prefer to reach quantitative requirements under the contract than the qualitative objectives of their mission to increase community development.
It must be noted that Government Organized NGO (GONGO) in China is absolutely not independent (Beja, 2006, 53-74.) because they are formed by the government or Communist Party Organizations (Brothers, 2015, 53-74). The Chinese government also extend their control to NGOs created by individuals dissociate from government or party organization (Ma, 2002, 113-130.). In practice the Government prefer to tender their public services to GONGO than the private NGO under the reason of easy to control their activities but a study (Chan, 2010, 301-306.; Kang & Heng, 2008, 50-55.) found that GONGO has lower control from the government than the other

[3] For example: conflict and disaster situation.
[4] In water service contracts practice, NGO is under pressure with the contractual requirements. The pressure is on NGOs to become increasingly commercial in order to implement their contracts efficiently.

kinds of NGO (see table 1 below). Though their activities are getting less control from the government, GONGO itself usually acknowledged as the puppet of the government that could be spared from ethical standards of bureaucracy just because to follow the order of the government.
In general, the tight control over NGOs in China presumably endangers NGO work as independent organization. Particularly the high level control for certain NGOs working in sensitive areas will pressure them to limit their work (Schwartz, 2004, 40-45.) in accordance with the authoritarian government political goals.

Table 1
Graduated Control of NGOs in China [Wu, F. & Chan, K. M. (2012), 9-17.**]**

Business Nature	Main Funding Sources	Scale	Level of Control
Category I: service delivery	Government, GONGO, official foundations	Small NGO based in residential community	Low
		Medium to large NGO, across communities	Medium
Category II: service, public outreach, and advocacy in non-sensitive areas	Domestic enterprises, domestic private foundations	NGO and/or cross-regional network	Low to Medium
	Foreign source of funding		Medium to High
Category III: advocacy in political/religious/ ethnic and/or other sensitive areas	Private donations, international NGO, and foundations	NGO, informal groups, and/or network	High

The successful experience of contracting out health care services to NGO in Cambodia and Pakistan also increased the public transaction cost to the government when compared to the direct public services. Understanding that staff motivation as the key challenge it needed to overcome, the NGO contractors applied additional salary and performance-based incentives for their staff (Bloom et. al., 2006, 11.). The government in fact must also allocate time to directly monitor the performance of contracted NGOs and ensure the delivery of public services in an efficient, effective, and fair manner. Thus, contracting generates higher cost and time consuming to the government which usually serve as huge burden for developing and least developed countries.
Indonesian practice on government-NGO relationship seems reliable and closed to the ideal concept. Under the Indonesian law, NGO has an important place to support government role to provide public services to its citizens.[5] Noting that contracting out such services will lead to higher cost and time consuming thus partnership between NGO and government

[5] Act No. 32 Year 2004 about Local Government, article 195.

provider services work together under the 'Memorandum of Understanding' (MoU) which is not legally binding between them but giving guidance the role and function of NGO in the service delivery. For instance, MoU between local health provider and MoU usually positioned NGO as the controlling party to supervise the delivery service not as the direct provider. In natural disaster or armed conflict situation, NGO has possibility to be contracted by the government to provide public services but only in short period to recover such crisis situation while the government has lack human and financial resources.[6]

Conclusion

Contracting out public services to NGO has been raised many critics in particular about their independency. This study found that even though in Pakistan and Cambodian practice of contracting generates advantages in certain areas but the cost of service delivery is higher than the direct service expenses. Additionally, NGO is under pressure under the public contract to become increasingly commercial in order to implement their contract efficiently.

With contracting or not, the Chinese government has been established the tight control over the NGOs that presumably strikes NGOs work as independent organization. Preferring tender public services to GONGO, as commonly refer as the puppet of the government; keep them at the distance of democratic values.

Indonesia has a distinct practice of contracting public services to NGO that only applied in crisis situation and short period of contracting. Though partnership between NGO and government guaranteed by the Indonesian law but the substance of contracting is not to make them to be service provider, merely as controller of service delivery. Aware with the cost of contracting, the Indonesian government prefer to enter into Memorandum of Understanding with NGOs, which creates certain guideline of functions but has no financial and legal obligation.

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[6] For example, in Tsunami disaster in Aceh (2004), Merapi Eruption in Yogyakarta (1994 and 2014), and internal humanitarian conflict in Poso (1998-2001).

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