Interview: Donald Hays, Principal Deputy High Representative: “Public Companies Will No Longer Enter into Business Contracts Based on Family Connections”

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A series of changes in legislation will regulate situation in business operations of electric and telecommunication companies here · Identification of clear responsibility

Representatives of the International Community in BiH launched broad activities to regulate affairs in BiH public companies. Donald Hays, Principal Deputy High Representative, outlined in his interview to “Avaz” that recent reports of independent auditors clearly illustrated the need to improve corporative governance.

Auditors’ reports

Dnevni avaz: What is current situation in BiH public companies?

Donald Hays: A several serious audits of public companies’ operations have been done in recent times and all auditors discovered very serious problems be it in water management companies, electric or telecommunication companies or government funds. All auditors’ reports point at a series of illegalities in the implementation of tenders, numerous conflicts of interest cases, violations of fundamental principle of rendering the best possible services to citizens

at the best prices. We have cases that local public companies allocated donations without any criteria. There is a case that an employee of a public company signed procurement contracts with a company owned by his wife…

Dnevni avaz: Where did it happen?

Donald Hays: In “Elektroprivreda RS”! Furthermore, we have cases that contracts on procurement, rendering services or in construction field were entered into with companies owned by those very people sitting in the boards of these public companies. There were cases such as this in telecommunication companies. And it is simply not in the interest of citizens but of the said individuals.

Dnevni avaz: What to do to prevent these things from happening?

Donald Hays: It was one of basics reasons why we decided to give our support to amending legislation so that such persons might be legally sanctioned in future. That is a particular reason why we insist on the adoption of laws which will regulate this field so that it would be clearly known: if you do this or that the punishment will be such and such. Thus people in public companies will not be able to say later in court that they did not know that it was not allowed.

Dnevni avaz: Which of the laws should regulate the situation in BiH public companies?

Donald Hays: First of all, that is the Law on Public Procurement. It precisely defines how to make public procurement. It prescribes how to publish procurement tender, what is the tender duration how to select the best bid and, what is very important, it will accurately define who will be held responsible for any violation of law and on what basis. Therefore it will not be possible to continue entering into business contracts according to family connections or with companies close to the people in supervisory boards.

Most favorable prices

Dnevni avaz: Are there any other laws regulating this domain?

Donald Hays: Of course. There is the Law on Investing in Public Funds and Investing of Public Companies in Other Businesses. You recall, for example, a case of "Elektroprivreda BiH" which invested money in farms, bought Bicycle Factory to employ its surplus workers… That is not a term of reference of "Elektroprivreda". Its terms of reference is servicing i.e. to give the best quality services at the most favorable prices and not to take care of social programs. Then there is the Law on Audit and Accounting, as well as the Law on Registration of Businesses. Professor Popovic of Banja Luka gave the best description thereof: "You need eight months to register a normal legitimate company in BiH at present and only three days to register a fictitious company." That is why we have so many illegal activities of money laundering here.

Unjustified fear of privatization

Dnevni avaz: Some people in BiH consider that regulation of situation is related to impending privatization of BiH public sector companies. What do you think about it?

Donald Hays: Let me make it clear. These laws have absolutely no correlation to privatization. They will only clean "minefields" of illegal activities in BiH public companies. Privatization demands reorganization, reduction of the number of employees, "screening" of bookkeeping records and a clear decision on privatization to be passed by governments and parliaments.

In RS they just said that they would like to privatize telecommunication company but they have done a little on that issue so far.

As for privatization of electric companies I have not noticed any intentions to do anything with that regard either in FBIH

or in RS. On the other hand I know that there is a wish to privatize “Elektroprivreda” Mostar but it yet depends on the willingness of the Government and the Parliament. Thus the governments in BiH lead privatization. The OHR has never done anything to identify any company in BiH for privatization. USAID, World Bank, European Commission and GTZ have been working with your governments to identify companies, which could be sold but even then they are only engaged in preparing tenders. I simply do not know how the efforts of anyone from the International Community who works to improve corporate governance in BiH public companies could be affiliated with privatization.