Interview: Donald Hays, Principal Deputy High Representative in BiH: “We Need Serious And Not Just Cosmetic Changes In Public Enterprises”

Ljiljan: Mr. Hays, at a press conference held in Sarajevo, you presented the results of a public opinion survey conducted by OHR. Among other issues, you indicated that, despite the ongoing changes the situation in public enterprises is still not good, they are still poorly managed, poorly supervised, too politicized, still losing public funds, more precisely the money that belongs to citizens. In short, you seriously criticized the current authorities for the delay in implementing the reform of public enterprises that they agreed to.

Donald HAYS: What I can tell you is that many people from public enterprises now come to me saying that, despite the fact that there have been improvements in comparison to the earlier situation, the rate of revenue collection is still low, there are many problems with regard to public procurement, companies’ business plans still aren’t being defined or developed, while company management structures are not using the instruments at their disposal to initiate disciplinary proceedings against the wrongdoers. In many cases, if persons in certain positions in these companies have been removed, these changes were mainly *cosmetic*.

Some managers took this very seriously. However, according to the existing legislation, as they claim, it is very difficult

for them to implement the defined policies of company management. Furthermore, courts have also indicated that, according to the existing law, it is difficult to prove cases of abuse by charges only. This is why the laws we indicated are so important: because they will ensure mechanisms for all honest managers, they will ensure discipline and focus the activities of persons who are members of supervisory boards of companies. Where necessary, these laws will ensure appropriate mechanisms for prosecutors who will make sure that those who are responsible indeed bear that responsibility.

With regard to the state-level authorities, the ministers have already forwarded these laws to the Parliament, and now they have to defend them. They have already confirmed to me that they will defend these laws before the Parliament.

With regard to the Federation, the law was adopted at the Government level and it was substantially changed, so now, consequently, we have a much weaker law. It is quite clear why the law was so weakened by these changes. Now it touches upon the issue of conflict of interest. There is no reason why anyone from the Government would want to have a weaker law.

With regard to the RS, the Law on Public Enterprises was adopted in that Entity. It is currently going through the second reading in the RSNA, and we are quite convinced that the law will be adopted at the next session, without any substantial amendments. However, neither of the Entities has yet forwarded to the Government the Law on Investment of Public Funds, nor have they informed us what are the issues regarding this law. This Law will ensure the clear demarcation for disposal of funds that belong to citizens. We will have to get seriously engaged in order to ensure the adoption of this law, at the Government level but also at the level of the Parliament. I believe that, following certain audit reports we've seen, which were disgraceful indeed, there is a need for these laws to go through the appropriate levels of authority and be adopted as soon as possible. The audit was carried out

in summer last year, and these laws still haven't been adopted. I am afraid that, unless we put pressure on the Government and Parliament, these laws might never get adopted. The reason is very clear. There is truly no one who supports this fully and earnestly, because they simply like the current situation and do not intend to change it.

Ljiljan: Who are the honest managers? Why is the Prosecutor's office facing so many difficulties in making decisions?

Donald HAYS: If I tell you who the honest managers are, you will immediately know who are the dishonest ones. What would happen if, for example, tomorrow I found out that the person who I told you was an honest manager turns out to be dishonest. I will tell you, as an example, that the new manager leading the Mostar Elektroprivreda is doing a far better job than his predecessor. Managers of RS Elektroprivreda and BiH Elektroprivreda are now cooperating much more willingly and knowingly in efforts to put in place a single economic system in BiH. However, problems are still present. I hear this from people who are in charge of power plants, as well as from other people working within the system. We need these institutions to be far more efficient if we want this country to achieve progress.

As regards the part of your question related to prosecutions and Prosecutor's offices and the difficulties they face, in the new judicial system that you now have, in cases like these they must prove intent. Therefore, it is not enough simply to prove that people did something, but it is also necessary to demonstrate in the course of proceedings that they intended to do it. Therefore, it is a great opportunity, for someone to admit that he/she was indeed doing the wrong thing in the course of the proceedings, which means that the prosecutor must collect enough elements and evidence in the process to prove that the person in question knew what he/she was doing, and knew that he/she was liable for these actions, in the sense that such actions were not allowed. Furthermore, the

prosecutor must prove that the person intended to commit the illegal action. Therefore, this law stipulates that it must be done, otherwise a prison sentence will follow. So it is clear, you know that you will be punished for any illegal action. And that is how these laws will facilitate the work of Prosecutor's offices.

Ljiljan: What, in fact, did you want to achieve with this press conference?

Donald HAYS: Some of these laws should be presented before the Parliament. With regard to these laws, we would like the representatives to understand their importance too. As for the laws that the Governments are still discussing, we wanted to draw the Governments' attention to the fact that their time is running out and that they must do something. Judging from their comment that followed, it seems to me that they are quite clear on this.

Ljiljan: Could you indicate some of the most drastic negative examples in terms of this public opinion survey?

Donald HAYS: If you had followed public opinion on the public sector and the situation in this sector as closely as I have, I think you would have found that everything I'm saying fully corresponds to the findings of previous surveys. I think that the World Bank conducted a survey in 2001 regarding corruption; in 2002 the UNDP conducted a similar survey regarding the credibility of government authorities and public officials. This survey, conducted by telephone, indicated that approximately 80-90 percent of the population think that companies are poorly managed, that costs are too high, that services are poor, that the managers' response is poor, and that the companies are acting as if they are not accountable to the public. The majority of citizens believe that company management structures are corrupt, and that people in charge should remove them. Once they are fired, court proceedings should be initiated against them and they should lead to

appropriate sentences. Finally, approximately 80 percent of citizens believe that their money is not being adequately used and disposed of.

Ljiljan: Were the surveys you carried out objective and grounded in facts, namely is this an issue of frustration and indignation of poor people, or true facts?

Donald HAYS: First of all, these surveys indicate the opinion of the public, they do not indicate facts. Therefore, based on these surveys you can see what the citizens think, you can see that they distrust public enterprises. However, you must also look at the results of audits carried out in the past four years. These audits, implemented by the main auditing authorities from three different levels of government in the Entities and the state, have indicated that a certain level of corruption exists. We had subsequent social audits of the same character, and they are still being conducted and they still indicate the same results. Even in cases of some government authorities, audits were carried out in other institutions, so a similar situation was found in the Federation BiH Ministry of Refugees, in water management, in institutions dealing with employment, we also had an audit within military structures, carried out in 2001, which indicated that non-existent automobiles were being paid for, services that were never provided, etc. The greatest surprise for me was when I saw the results of audits carried out in both Entities' defense ministries, and at that time they could not find the weapons they had receipts and certificates for. The same happened with ammunition, with some deadlines regarding staffing of ministries, certain contracts, investments, for example, in the Federation BiH Defense Ministry, it was determined that the Ministry itself spent twice as much money as they were allocated in the budget.

Finally, the Law on Registration of Companies will resolve another scandalous problem that existed in BiH – the problem of phantom companies. Once the system of registration of

companies is established appropriately, you will have a single database, and no one will be able to register a company without a tax number.

Ljiljan: There have been speculations in public that this, in fact, was just a way to put pressure on the authorities to sell both Telecom companies and the Elektroprivreda?

Donald HAYS: First of all, government authorities are implementing the privatization process. In a year and a half the RS privatized one company, while the situation is somewhat better in the Federation, where they have privatized approximately 12 companies. Ministers of Industry have the competencies for privatization activities and they are responsible to the Government and the company. The process of restructuring the public utility sector is underway. If you spoke to directors of small businesses, they would tell you that no activities are currently underway in order to privatize these capacities, even though some would like to see the process of privatization of facilities used for production of electricity finally initiated. With regard to the telecommunications sector, the RS is working with the EBRD in order to begin the process of privatization of RS Telecom. However, these activities have been going on for a year and a half.Eronet is a private company, and there are no activities being taken with a view to privatizing BH Telecom. I hear comments on how it would be good to start working more seriously on privatizing BH Telecom, because it has become evident that the authorities, without exception, are quite inadequate in terms of their ability to manage companies. Many airline companies worldwide have gone bankrupt, and their governments had massive funding sources to finance them. Why does BiH think it can avoid such a development, in other words, why does it think it can avoid this reality, which exists in other countries?

Ljiljan: Where did you get the information that 156 million KM was lost in the Federation BiH and 204 million in the RS,

which comes to a total of 360 million KM?

Donald HAYS: We got this information from the Special Auditor, and it is based on several facts, to be more specific on lost revenues, i.e. revenues that were not collected or were written off. In addition, there were contracts far more expensive in comparison to the realistic market price, as well as activities that should have been implemented because they could have brought in profits, but were never implemented. In other words, if there had been a business plan, the company most likely would not have spent its money in the way it did. Remember, for example, that the RS Elektroprivreda collected 50 percent of funds, while Mostar Elektroprivreda had a slightly higher collection rate, but it also had bills that were not paid, in some cases even for seven years. All three companies gave significant donations, while in fact they merely represented a front for political parties, and more precisely, they were wasting money, your money, which should have been directed more properly. Consequently, hundreds of millions of KM will have to be spent in the electricity sector over the next couple of years just on the maintenance of the system, because earlier the funds were not used to maintain the system.

Ljiljan: The state laws that you refer to were adopted by the Council of Ministers a month and a half ago. Didn't you know that?

Donald HAYS: Presently these laws are before the Parliament, and something must be done there in order for the Parliament to adopt them as soon as possible. Therefore, the ministers must act as sponsors of these laws, in order to ensure fast adoption by the Parliament. In other words, they must take the responsibility for the adoption of these laws, because it is not enough to have the law adopted at the level of one institution, and then only throw it across the wall to another institution. Several ministers from the state level yesterday said they would act in this manner, i.e. that they would use

that approach towards the adoption of these laws.

Ljiljan: What can you say about using family connections to get employment? Can you indicate any examples?

Donald HAYS: If you look at the results of audits of Elektroprivredas in Mostar and RS, you will see examples where different persons were giving different benefits to their family members. In the RS Telecom, it was determined that some persons were indeed buying services from their in-laws, or board members who were buying certain services from other relatives who owned companies. In any event, nothing in this regard has been legally defined. In this matter we are dealing with a practice that people believed would simply disappear. If you do not have a law that precludes this possibility, i.e. a law that would define such actions as illegal, of course people are going to ask themselves: why wouldn't I do a favor for my family members?

Ljiljan: BH Telecom is a shareholders' company and it is no longer a Public Enterprise, it has its Assembly and governing bodies. The Law on Public Enterprises is already in procedure, the Parliament must give its opinion now, all procedures are underway, all enterprises will become shareholders' companies. The General Manager does not have the highest authorities and competencies anymore, rather, the Parliament is responsible. In that case, can ministers be responsible too, in other words can Minister Nedzad Brankovic be held responsible?

Donald HAYS: I believe you have been following this situation long enough to know that all these things will have to happen, that certain funds, payments collected from issuance of licenses will be used as funds for construction of roads. Certainly, these laws will hold accountable the ministers, governing boards, civil services and all those violating the law. The Public Procurement Law regulates all procurements that are under the responsibility of authorities, public enterprises, agencies, ministries. Therefore, any investments

made by the authorities will be regulated by this Law.

Ljiljan: How can BiH resolve the problem of public debt, which has reached 27 billion KM, as you recently stated?

Donald HAYS: In December last year, all the governments adopted Decisions defining the way for resolving the problem of internal debt. These Decisions stipulated different methods to be used in the process, and they represented a plan. Since December last year governments at the Entity and state levels have been working on the draft law, which is now ready to be presented at the level of the Parliaments. In some cases, persons who owned minor shares will most likely be compensated in cash. In other cases people will get public bonds, but when they present the relevant documentation indicating that money is owed to them, they will also be able to instigate the appropriate procedures in order to resolve the problem.