

Interview: Ambassador Donald S. Hays, Principal Deputy High Representative for BiH: "How Can We Stop Corruption"

Ambassador Donald S. Hays, Principal Deputy High Representative for BiH, American diplomat in charge of coordination of anti fraud efforts, speaks for the first time about the widespread crime in the Herzegovacka Bank, its appalling dimensions and the alliance between Herzegovina businessmen and former Croatian government; he is announcing that the status of Mostar Aluminum factory is going to be solved soon and a radical reform of the judicial apparatus in the country

"Herzegovacka Bank" was a treasury of the so-called third entity which would treat Sarajevo as Montenegro treats Belgrade!

- *In 1999 Croatia paid one billion Croatian kunas via the Herzegovacka Bank. The funds were originally intended for HVO and war veterans, but they did not end up in their pockets;*
- *We are trying to prove together with the Croatian government that the funds paid by Croatia to Herzegovina returned to the private accounts in Croatia;*
- *The Aluminum Factory accounts for one fourth of the overall Federation exports and a definite solution of its status needs to be identified with caution;*

. *So far, 74 criminal charges have been filed in the Federation of BiH and 26 in the Republika Srpska for the crimes and misappropriation of the funds by the previous governments and their officials*

This time last year SFOR, supported by the special police and financial inspectors, made a raid on the Herzegovacka Bank headquarters and soon thereafter on a number of its branch offices. The forces seized all the documentation, computers and cash registers and emptied the cash boxes. The BiH public rightfully expected to hear during the following months the findings of a comprehensive and thorough investigation conducted by the local and international experts. The criminal charges filed against some of the members of the Mostar Croherz AG management and an announcement of other charges against the managers of the Herzegovacka Bank are the results of the investigation of which the public expected much more. The Herzegovacka Bank case and also some other pending issues were the reason why we wanted to interview the Principal Deputy High Representative, Ambassador Donald S. Hays, an American who is believed to have triggered and coordinated all international actions aimed at fighting against organized crime and corruption in Bosnia and Herzegovina.

SB: Given the manner in which the investigation into the Herzegovacka Bank case began and all subsequent developments, it has not yielded the results which the public expected to hear. In other words, could more have been done over the course of the past twelve months to identify and document illegal activities of the Herzegovacka Bank, which would have resulted in issuing indictments against certain individuals?

DH: You should know that the Herzegovacka Bank was the third strongest bank in BiH at the time when the investigation began. The investigation into the operations of such a big bank under normal circumstances, for example in the United States or in Western Europe, would take two or three years. We should add to this all the aggravating circumstances – we had

to use force to enter the Bank, while the Bank officers and employees tried to destroy the documentation. This means that we had to locate and retrieve millions of computer files, which took us more than six months. We had to hire forensic experts who would identify precisely the manner in which the Bank operated, in order for us to know whether there were any illegal activities or the banking operations were conducted in an inexpert and unprofessional way or the management of the bank's operations was conducted in an acceptable way. So far we have managed to identify a four-year business period of the bank and all of its operations. Currently four investigative teams are involved, which include forensic experts, banking fraud experts, international experts, representatives of the Interior Ministry, tax inspectors and the Federation investigating judges.

HELPING SECESSION

SB: What could you tell us about the work done so far?

DH: What we have already identified is that despite the statement that the Bank was established to help improve the economic situation of the Croats in the Federation, the purpose was rather to establish the treasury of the third entity and there is indeed the documentation in support of that! When I say 'the third entity', I do not mean an entity like the Republika Srpska, but most certainly like, for example, Montenegro, an independent entity within a state. But even then, when the structure was established, which implied the possibility of levying taxes, the possession of companies which could group the entire economic interest of the Croat people in the Federation etc., the role of the Bank shifted from serving national interests to serving the interests of organized criminal groups. When I say that, I mean conversions, manipulations with loans or credits, use of firms, tax evasion, granting loans to those whom the Bank knew would never repay the capital, let alone interest, provided that they would invest the loans where they were told to, and

so on. Only in 1999 the Croatian Government paid via the Herzegovacka Bank more than one billion Croatian kunas for HVO and war veterans, widows and disabled soldiers. We tried to check but could not find where all that money had gone, but we do know that it did not end up in the pockets of those whom the funds were originally intended for. I mean, we are investigating where all those monies went, who was bribed and who was involved in each illegal activity. I think that more than twenty cases are already in prosecutors' offices and I am expecting that the number will double by next fall. Our intention is to follow the Herzegovacka Bank case till the end and finally have indictments issued against all those who betrayed their own citizens.

SB: You have said that some twenty cases are already being dealt with by the prosecutors. Could you be more specific and tell us the names of the persons involved and whether they worked for the Bank or they were managers of the firms with the Bank's majority shares, such as Croherz AG?

DH: Several cases that I have mentioned focused on illegal activities of the Bank management and violations of the existing Banking Law and some other legal regulations. Nevertheless, most of the cases concern tax evasion, money laundering and so on, and those activities are linked to the companies of which you have mentioned one. But when it comes to the companies and their operations, the investigation always comes back to the bank, examining who authorized or approved a transaction which was in contravention of the law. This is being done by the prosecution. This is why I think it would be inappropriate to identify the individuals, knowing that the indictments have not been issued yet. The fact is indeed that we have twenty cases of tax evasion, money laundering, fraud, abuse of office and so on, which are related to the Bank itself and its management, but also to the management of the companies such as Croherc and some others which were involved in financial manipulations and, in

substance, in abuse of trust.

SB: The investigation into the Herzegovacka Bank's business operations will not be completed without the information available to the Republic of Croatia. Specifically, have you received a response from the Croatian government on how much money from the Croatian budget was paid via the Herzegovacka Bank to HVO and war veterans and victims of the defense war?

DH: According to the information we have, 1.16 billion Croatian kunas went through the Bank in 1999. That is the information we have. We are not sure what information was given to our investigators or the provisional administration of the Herzegovacka Bank, concerning the overall amount. What we have to acknowledge is the fact that the funds were allocated by the former and not the incumbent Croatian government. My impression is that the former Croatian government effected some payments without the approval of the Croatian parliament or responsible ministries. It was done by a narrow group of people. We have close contacts with all levels of authority in Croatia. They receive some information from us and we get other information from them. On the other hand, if you ask whether we have received answers to all of our questions, I have to tell you that we have not. But the investigation is ongoing and we are working on it together. I think that we shall be able to sum up the results of the investigations ongoing in both BiH and Croatia in several months from now and we shall consolidate them together. The intention of the Croatian authorities is to prosecute several individuals for money laundering. They know that the funds were taken from their treasury and were paid to BiH and then returned to Croatia, but not to the treasury.

SB: Was that why Croatian Public Prosecutor Radovan Ortynski visited Sarajevo on several occasions in the last few months? Officially, Ortynski and the Federation prosecutors negotiated the agreement on legal assistance which has never been signed. Unofficially, Ortynski was interested in the case of the

Monitor M firm, owned by Ljubo Cesic Roys, and in some other firms and individuals?

DH: I believe that the Monitor M firm was on the agenda of their negotiations from time to time. As far as some individuals are concerned, I assume that the Monitor management was also the topic of those negotiations.

SB: Did they discuss only Monitor or some other companies and individual names?

DH: There is a corresponding bank involved in the whole case. That bank received the Herzegovacka Bank moneys in Zagreb and that bank is also under investigation.

SB: And its name is?

DH: No comment, but you could guess which bank it is.

MINISTERS TOO BELIEVE CORRUPTION IS INCREASING

SB: Three years ago OHR issued an anti-corruption strategy and the document with a similar working title was adopted at the state level late last month. What has happened meanwhile?

DH: I think there have been some unsuccessful attempts to develop anti-corruption strategies at the entity level. Last fall the international organizations produced a report which identified clearly that the people in this country, both its citizens and government officials, believe that corruption is increasing. Even ministers responded that the corruption was increasing. It became clear that the judicial system, as it is now, did not support aggressively the anti-corruption efforts. Thereafter the World Bank carried out research which led to a much better understanding of the depth and strength of the corruption in the country and the scope of the problem which needed to be addressed. The anti-corruption strategy is also a poverty alleviation strategy. Namely, corruption increases the costs of each product and service. The World Bank believes

that it is 20 percent and most citizens believe it is much more. The fact that you would need 140 days to establish a company is partly a result of the corruption in the system. The fact that people do not pay taxes is also a part of the overall corruption, not because they are corrupt but maybe because those who collect taxes are not honest. The estimate is that the RS lost last year KM 300 million just because of defaults on customs payment. There is a point in your question but you should first understand the symptoms before you begin to deal with them.

SB: It is good and positive to have an anti-corruption strategy which is supported by ministers, a majority of whom work in the interest of their private firms rather than for the general wellbeing for which they were elected and are paid now! What would you say about, for example, the deputy director of the Federation Customs Administration, whose first task after he took over that responsible duty was to grant an exclusive right to purchase consumables to the firm which he managed himself?

DH: In order for that to be illegal you need to have a law which will prevent it. This is called conflict of interest and you do not have such a law. Such things are unfortunate. It would be illegal in the United States or in West Europe, but here many such things are not ethical and they are not treated as illegal.

SB: Why did you not insist on that law more than you insisted on the development of the strategy?

DH: The law must go through procedure and you are aware of all the problems in the course of procedure. It takes six to twelve months to adopt a law provided that the Parliament wants that law. Of course, there is a conflict of interest of those who are a part of the adoption procedure. Great effort is invested in an attempt to have a law adopted, which would bring order into the work of the government bodies and public

institutions. I believe that there are parties in the Federation and I think that there are people in the RS who want that to happen.

CRIME IN THE DEFENSE MINISTRY

SB: Finally, when will ordinary people be able to see concrete results or thieves behind the bars?

DH: Solid improvements will require several things. You need the necessary legal regulation. You need a functioning judicial system, which will be transparent and predictable and you need a public reaction which would ask political leaders to demonstrate political will in addressing those problems. At present the public is inactive, the judicial system is only beginning to change generally, while the laws are either in draft form or in parliamentary procedure. I think that the next government could bring some crucial changes in the field we are discussing. Some initial steps are tangible through the use of the supreme audit in the past eight months, which identified various forms of corruption. The governments of both Entities are willing to see criminal charges brought against all those involved and this is already the beginning. Good, but just the beginning.

SB: You are referring to the ongoing audit of the work of some ministries and governmental bodies?

DH: That's right. It concerns 74 cases of serious corruption committed in the Federation and 31 cases in the RS. In the RS, the prosecutors accepted 26 of 31 cases. We are still working with the Federation prosecutors to see in which cases there are reasonable grounds for criminal prosecution. We are expecting them to use this process, to identify solid cases which will be brought before the court, continue investigations and learn lessons which would help them build protection mechanisms in the system. For example, I know that in the Federation Defense Ministry alone more than 40 cases of

crime have been registered. They concern stolen equipment, cars, computers and so on. I cannot speak about the value, but it is significant.

SB: In the end, the fact is that numerous criminal charges have been brought against corrupt and dishonest individuals from the business and political scenes, although no one has been convicted yet. Where is the problem?

DH: I will be frank with you. Last fall the Independent Judicial Commission intended to establish the structure within which judges could have monitored themselves. This did not function properly. After assessments and discussion with the Entity governments and the state government and later on with the Peace Implementation Council, we agreed that we should take over all judicial activities – restructuring, engagement, training, education and the new laws. And you should know who appointed the sitting judges. Most of them were appointed during the war when their skills were not as important as their ethnic background or political affiliation. Those things will be resolved in a decisive manner.

The aluminum factory accounts for one fourth of the Federation export!

SB: In addition to the Herzegovacka Bank case, there is also much ado about the still unsuccessful attempt to carry out an independent audit of the transformation of state into private ownership of the Mostar Aluminum Factory. You have sent a letter to Alija Behmen, Federation Prime Minister?

DH: First of all, the Mostar Aluminum accounts for 25 percent of the overall Federation export, which makes it an extremely strong company in both the Federation and BiH. This is why any activity which is related to that company must be dealt with very carefully. The ownership of the firm was discussed by the Federation Government and the Aluminum management and both sides asked the international community to get involved in

finding a solution for the company. And we have been negotiating for the past three months. First, it has been agreed with the World Bank that it would take the lead in the financial audit and the audit is ongoing. Another thing concerns the question of how the pending issues concerning ownership, management, profitability and the company's future are going to be resolved. I think we are very close to reaching an agreement on a comprehensive solution which will be satisfactory for both the management of the company and the Federation Government. Still, the final details have not been agreed on.

SB: It sounds like seeking a compromise between the Federation and the Aluminum management?

DH: What we are trying to achieve is to find a method by which they could agree on finding a solution to the problem in a rational way. Whether it is going to be a compromise, negotiation, arbitration, it does not matter. I think that both sides have approached the issue quite positively. There are no press headlines any more, which is good since some major investors are involved in the whole issue and the company's future depends on its credibility and a feeling that there is a future for that company. The World Bank has supported one international audit company which will conduct a financial audit of the Aluminum Company and it is already an ongoing activity. However, it has nothing to do with ownership, I mean the problem which must be solved, who owns what, how much and so on. Secondly, the issue of a certain compensation to the employees who lost their jobs should be solved as well and also the compensation to the laid off workers. There should be a business plan which would allow the appropriate leadership to commence privatization. This is a whole set of concerns which all sides involved will have to cope with during the negotiating process.