

Interview: Donald Hays, Principal Deputy High Representative: "Milica Bisic is Elliot Ness"

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In an interview for Nezavisne novine Principal Deputy High Representative, Donald Hays, says that BiH is facing a radical reform of its judiciary, which will inaugurate a modern judiciary system that will meet all European standards and include highly professional and well trained judges, prosecutors, court clerks, court police and court administrators. According to him, the entire set of new criminal codes has to be harmonized with European standards. "The final result should be visible in approximately two years", Hays said adding that everything that has been planned by the IC will not be successful unless the citizens of this country respect and demand the existence of that type of judiciary system.

Nezavisne: Mr. Hays, the Office of the High Representative has information on 250 cases of misconduct by judges and prosecutors, or weak results achieved by judges and prosecutors. Will all these judges and prosecutors be removed?

Hays: Of course they will not. We have legal experts and investigators whose job is to find out if there are real reasons for the removal of some judges and prosecutors.

Nezavisne: What is, in fact, implied by misconduct or weak results in the work of judges and prosecutors?

Hays: The easiest part of the job was to identify those who were blocking the process of return. They manipulated people who were trying to reinstate their property and very often they took money for that. There are also judges who were involved in illegal activities in the privatization process. Also, there are some judges and prosecutors we found out were influenced in some criminal cases, be it trafficking in women, narcotics, smuggling of weapons, etc., etc.

There is also a significant number of judges who realize that the job they have to do in accordance with new and modern standards is too much of a challenge for them and that they simply are not competent enough to do it in the right way. Of course they will not be removed during the reform process unless they have committed some serious violation. However, when the process of re-appointment of judges starts, we shall have to weigh who did what.

Nezavisne: Will criminal reports be filed against some judges and prosecutors?

Hays: The first step is to remove them from their positions. The process of removal is not as demanding as criminal procedures. It is very clear that the cases, for which it is established that crime and corruption were involved, will be submitted to a public prosecutor. These recommendations may come from various places, e.g., from the Police, Tax Administration, Anti-Corruption Department, etc., etc.

Nezavisne: What is the next OHR step with regard to the judiciary reform?

Hays: In the next couple of months we intend to start working very seriously on identifying corrupt judges and prosecutors and removing those who have been thwarting the rule of law. At the same time, working with organizations such as the IPTF,

the OSCE, the US Embassy, the German Embassy, the British Embassy and similar institutions, we shall set up a department tasked with fighting white collar crime so that we have a court which will be able to deal with these cases in a fair and objective way once some judges are removed from their positions. We also intend to hire highly trained personnel. This will include experts for criminal law who will draft laws together with your experts. Some organizations and countries will provide training for judges, prosecutors, court police and court clerks. There will be reform of education of the legal branch. We shall have to deal with the issue of the Criminal Code and Sentencing Code and the way in which correction facilities, that is prisons, work.

Nezavisne: You have stated that you support the Head of the RS Tax Administration, Milica Bisic. However, there are some views that the Law on Tax Administration puts the RS Tax Administration above the state because tax inspectors are allowed to sequester the property of tax payers without having a court warrant issued.

Hays: Tax inspectors in my country can also do that, because the tax laws are different from ordinary laws. A tax payer is considered guilty until proven otherwise. It has to be that way if the tax administration has to deal with a cunning criminal who is hiding a large sum of money. If you notify him/her in advance that you will come and sequester his/her property he/she simply disappears and his/her money disappears too.

Nezavisne: Private entrepreneurs think that they are put on an unequal footing with RS-owned enterprises against which the RS Tax Administration has not launched the procedure of forcible tax collection, not even in one case and they owe more money than private entrepreneurs?

Hays: We have to believe that the RS Tax Administration has just begun this process, but we also have to be aware of the

fact that the Government controls the RS-owned enterprises and is able to force them to pay debts any time. Why should private enterprises be warned by going first to the state ones? It is my personal belief and my experience in this country tells me that the Government has a greater possibility to collect tax money from enterprises owned by the Government. It seems to me that the owners of private enterprises who avoid paying taxes are very inventive.

Nezavisne: Tax debtors mostly recognize they have debts, but also claim that they do not have the money to pay taxes. Some private entrepreneurs have claims against the RS Government.

Hays: That is not an excuse. Why would some people pay taxes, and others not? I have noticed that in BiH there is a clear distinction between those who make a lot of money and the rest of the population. Even the government institutions here are very poor. Unless someone starts very seriously collecting taxes from those who have benefited the most, then the people who pay taxes will find themselves at the bottom of the economic chain and not on the top. If the activities, undertaken by Head of the RS Tax Administration, Milica Bisic, could be replicated in some other places, this country would stand on its feet much faster.

Nezavisne: Some people call Milica Bisic Elliot Ness. Does that nickname suit her?

Hays: I think she really is Elliot Ness.

Nezavisne: Does BiH need a law on excessive-profit?

Hays: That question is frequently asked in the United States. For example, a basketball star makes \$ 45 million a year, while a teacher makes \$ 30,000. The question crops up as to who gives more useful services to society. However, if you want to have a functional economy, then putting legal limitations on the profit you make, thanks to your intelligence and creativity, really makes no sense. One rule

should work in any democratic society – the more money you make, the more money you should pay to society. Secondly, profit has to be completely transparent and must not be a product of illegal activities. I am not sure that the issue of excessive profit and the issue of where that money comes are contradictory. In some cases profits were illegally made in the tobacco industry and the wood industry. There has been weapons smuggling, and smuggling of oil shipments which were said to be intended for heating but in the end turned out to be diesel-fuel. For these things we need efficient police, efficient customs administration and efficient judges who will put these people behind bars. Together with the Government, we are considering adopting a law that will allow the confiscation of goods obtained in an illegal way and then these funds would be used to reduce the heavy tax burden on others.

Nezavisne: Do you support the writing-off claims law which has been proposed by the RS Government?

Hays: We have recently discussed that law with the RS Government representatives, because the IMF and the World Bank have been very concerned about the effect this law might have. If the RS Government is trying to write off debts so that enterprises could be sold for more money in the privatization process, then maybe there is a better way of doing that than by introducing this law. I will talk about it once again with the RS Prime Minister and the other representatives of the IC will do the same.

Nezavisne: The same law stipulates the writing-off of loans approved to RS companies from the RS budget through commercial banks?

Hays: If that is true we shall not allow this to happen.