

ALES BIALIATSKI'S CASE: A LESSON TO BE LEARNED?

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There is a Russian proverb saying that the right hand does not always know what the left hand does. Ales Bialiatski's story illustrates this saying: he was arrested after Lithuania and Poland had shared information about his bank accounts with the Belarusian authorities. Lithuania and Poland are regarded as strong promoters of democratic changes in Belarus, yet they took their share in this situation.

The case of Ales Bialiatski, President of the Human Rights Centre (HRC) 'Viasna' and Vice-President of FIDH, demonstrated the profound skills of the current Belarusian regime at being capable of playing by its own rules. It also vividly showed the lack of efficient mechanisms of international support for Belarusian civil society, which is rather weak and faces many internal problems. This case is a lesson to be learned by the international democratic community in order to reconsider their relationship with Belarusian civil society as well as to rethink the tools of cooperation with the representatives of Lukashenka's regime. It is important to learn why Belarusian officials chose Ales Bialiatski to be the victim of the 'demonstrative punishment' and to understand what his arrest means for Belarusian society.

Ales Bialiatski's arrest should represent the general pressure of the non-democratic regime of Lukashenka on the non-profit, so-called "third" sector. On various occasions, Belarusian officials used different means to limit the activities of the Human Rights Centre (HRC) 'Viasna', one of the most well-known human rights organizations, led by Bialiatski. In 2003, 'Viasna' was officially shut down by the decision of the Ministry of Justice of the Republic of Belarus. Over the recent years, the several attempts the organization made to reregister have all been unsuccessful. The HRC 'Viasna' was one of the most active organizations in assisting political prisoners after the 2010 Presidential elections in Belarus. After the elections, the HRC 'Viasna' faced another wave of repressions:

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its office was searched several times, the staff interrogated and Ales Bialiatski received an official warning from the General Prosecutor's Office for acting on behalf of an unregistered non-governmental organization. The latter is considered to be a crime in accordance with the Belarusian Criminal Code¹. It is notable that unregistered NGOs cannot receive financial support from abroad. In addition, all NGOs in Belarus have to undergo financial scrutiny of the Department of Humanitarian Activities at the Ministry of Finance in order to receive foreign grants. This is the main reason why the HRC 'Viasna' had no choice but to transfer money to bank accounts in other countries, namely in neighbouring Lithuania and Poland. Such ways of getting finances for their activities are quite typical for Belarusian NGOs and oppositional political actors, while the current regime cuts legal ways of getting finances inside Belarus². In Bialiatski's case, his bank account statements included the transfer of funds from several international governmental and non-governmental organisations which had donated to the Human Rights Centre³.

What happens to Bialiatski?

On 4 August 2011, Ales Bialiatski was detained within the framework of the criminal case instigated under Article 243, part 2 of the Criminal Code of the Republic of Belarus, namely "concealment of profits on an especially large scale". According to the Belarusian Criminal Code, this article envisages up to 7 years of imprisonment and confiscation of property. The reason for Bialiatski's detention was the disclosure of information of his Lithuanian bank account by the Lithuanian Ministry of Justice. Later the information about the disclosure of similar information by the Polish General Prosecutor's Office was spread by the media and confirmed by Polish officials. From the formal point of view, the information was shared within the framework of

¹ According Article 193-1 of the Belarusian Criminal Code, the "illegal organisation or activities of public associations, religious groups or foundations or participation in their activities" is punishable by from six month to two years in prison.

² However, the whole situation of getting money for their activities mostly from abroad makes Belarusian NGOs highly dependable on donors' organizations.

³ Belarus: UPDATE - Human rights defender Ales Bialiatski accused of tax evasion and pre-trial detention extended. <http://www.frontlinedefenders.org/node/15720> 2011/08/18

bilateral agreements between Belarus and Lithuania (and Belarus and Poland) on Legal Aid and Legal Relations in Civil, Family and Criminal Matters⁴. The Belarusian Revenue Agency interpreted the amount on the Bialiatski's account as his personal income and accused him of concealing it. In reality, this money was used to finance activities of the HRC 'Viasna' related to human rights. In particular, Bialiatski's account was used to pay lawyers' services and to help families of convicted activists⁵.

Several days after Bialiatski had been arrested, high Lithuanian and Polish officials regretted the disclosure of the information that was used against the human rights defender. Polish officials who were responsible for sharing information with the Belarusian authorities were fired. In Lithuania, Aušra Bernotienė, Head of the Department of International Law of the Ministry of Justice of Lithuania, resigned of her own accord. At the same time, Bialiatski's case goes beyond sharing financial data of some other civic activists with the Belarusian authorities⁶. For instance, the Polish Government reportedly decided to suspend its legal assistance to Belarusian and Lithuanian officials discussing possible actions in this direction.

Why Bialiatski?

The question to be asked here is why Ales Bialiatski in particular was chosen to be the target of an attack by the Belarusian authorities? In principle, it could be any other political or civil activist who has a bank account in Europe. There are many explanations. First of all, human rights organizations (Viasna and the Belarusian Helsinki Committee – the only human rights organization which is officially registered in Belarus) are known to the Belarusian people and, in comparison to other NGOs, have a relatively high level of trust. These

⁴ Belarus: Arrest and detention of human rights defender Ales Bialiatski, subject of a criminal investigation <http://www.frontlinedefenders.org/node/15656> 2011/08/08

⁵ The Committee on International Control: One arrest signals a dark time for Belarusian civil society <http://hrwatch-by.org/en/one-arrest-signals-dark-time-belarusian-civil-society> 2011/08/29

⁶ According to an unofficial report of one of the Belarusian human rights organizations, Lithuania provided the Belarusian authorities with the information concerning another 'Viasna' member, Valiancin Stefanovic; however, in his case the disclosure only entails administrative liability (Stefanovic will only have to pay taxes and a fine).

organizations are also involved in the election observation activities, which makes them more visible to the Belarusian citizens. Secondly, human rights defenders are well-known abroad among European organizations, officials, politicians and donors. Therefore, Belarusian human rights organizations find support among Belarusian population and political recognition by the international community. This combination of internal and external legitimization makes human rights organizations rather problematic for the Belarusian regime. Previously Lukashenka's regime resorted to mainly legal restrictions against the organizations as well as informational propaganda against their leaders. However, long-term arrests are new.

On the other hand, we should admit the efficiency of actions of Lukashenka officials. Bialiatski's accusation of the concealment of profits perfectly correlates with the propaganda against the political opposition and stigmatization of its representatives as 'grant suckers', both being promoted by Lukashenka. In the current economic crisis in Belarus, it is easy to label a person with a big bank account as a 'public enemy'. Moreover, this incident provided the official propaganda with a suitable background for accusing European politicians who defend Bialiatski of following double standards. For instance, the ONT, one of the central Belarusian public TV channels, broadcasted a story with a vocal title "Pravo na besspravie" ("The Right to Rightlessness")⁷. The main thesis of this program was to show that all people in Europe (Germany, in particular) pay taxes while some politicians (namely, German MP Marieluise Beck) use double standards to blame Belarusian officials who merely follow norms of national laws. Although it is difficult to estimate how many people trust this propaganda, the message of the authorities is quite clear.

Players in the field: who wins and loses in 'Bialyatski's case'

Neither Polish, nor Lithuanian Ministries of Foreign Affairs took into consideration the possible aftermath of the Bialiatski case before his arrest. There were a lot of speculations on this topic in Lithuanian, Polish and Belarusian media, which all sought to find either personal interest of some

⁷ ONT: "Pravo na besspravie" <http://www.ont.by/programs/programs/kontyry/topics/0069317/2011/08/28>

officials⁸, or to blame particular officials for being politically short-sighted. However, the main conclusion is that, in spite of the many years of cooperation with the Belarusian opposition and civil society, there are still no effective mechanisms of protecting their members. Unfortunately, we could easily find other examples of ineffectiveness of instruments used by the international community with respect to Belarus, for instance, the situation with visa bans for Belarusian officials whose names are on the list of persons who cannot cross the borders of the European Union and who are getting Shengen visas because their names have been misspelled, and so on. It is clear that without changes in the entire mechanism of support of Belarus' civil society by EU states, the 'Bialiatski case' would be just one piece in the chain.

Which political actors are involved in Bialyatski's case? What roles did they play in the whole situation? Let us start with the **Belarusian authorities**. First of all, they got a chance to show 'who is the boss in Belarus' while demonstrating their readiness for all kinds of oppression against the opposition. Secondly, they were able to use legal agreements with democratic states to achieve non-democratic goals. Thirdly, the official propaganda got an additional strong thesis to be used against political and civic activists. And last, but not least, Lukashenka got one more political prisoner who he could use in handling with the international democratic community. Strictly speaking, the Belarusian regime is the main winner of the 'Bialiatski case' because it has nothing to lose and because it got another show case for its own political and propagandistic purposes.

Another actor – the **international community which supports Belarus** – got one more clear negative signal of the absence of democratic changes in Belarus. At the same time, it became clear that mechanisms of formal cooperation with Belarus do not work properly. On the level of implementation, European (Polish and Lithuanian) officials were confronted with the lack of tools to deal with Belarus. The 'Bialiatski case' revealed the need to change and look for new apparatus for actions in the non-democratic environment.

Belarusian civil society as yet another actor in the field got several important external signals and demonstrated contradictive internal reactions.

⁸ For instance, it appears that the husband of a Lithuanian official in the Ministry of Justice worked in an attorney firm in Belarus which cooperates with the regime, which could cause his personal interest in Bialiatski's case.

Some civil activists publicly blamed Polish and Lithuanian officials for betrayal⁹. Their statements showed the loss of trust in the partners in Poland and Lithuania, although that trend was not a dominant one¹⁰. This situation also raised a wave of solidarity within the active part of Belarus' civil society: petitions, middle-sized advocacy campaigns, and the initiative to nominate Bialiatski for the Nobel Peace Prize. These actions demonstrate readiness of the Belarusian civil society to conduct a representative freedom and human rights campaign.

Conclusions

Unfortunately, Bialiatski's case demonstrated the victory of the Belarusian authorities and their skills at using political mechanisms for their own purposes. The civil society was not too successful in resisting the authoritarian challenges. International donors (Lithuanian and Polish in particular) demonstrated their poor readiness to play with the opponent who does not follow any rules. Moreover, they lost certain trust from representatives of the Belarusian civil society who had regarded them as supporters and partners. At the same time, the Belarusian civil society got the possibility for consolidated actions in support of Bialiatski.

Generally, the lesson to be learned from Bialiatski's case is that democratic mechanisms do not work properly under the non-democratic regime. Thus, the international community needs to find other ways and policy instruments to deal with it. Meanwhile the Belarusian civil society needs to develop common actions against the non-democratic regime. Changes might not happen otherwise.

⁹ See some publications in Belarusian media. For example, Uladzimit Labkovich: Silence of Poland Deepens crisis of trust 2011/19/08 <http://www.belsat.eu/be/wiadomosci/a,4418,uladzimir-labkovich-mauchannie-polshchy-paghlybliaie-kryzis-davieru.html> (in Belarusian)

¹⁰ On the other hand, governments, national and international organizations are the main (and often the only) source of financing NGOs activities. It is difficult to wait till Belarusian politicians and NGOs can afford themselves to stop cooperation.