

DEVELOPMENTS IN THE FIELD

BHR Agenda and Authoritarian Regimes: The Case of Political and Human Rights Crisis in Belarus Since 2020

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Abstract

This article aims to highlight peculiarities relating to the realization of the state duty to protect human rights during the crisis situation after the 2020 presidential elections in Belarus. It proposes that we engage more seriously with the context of a strong authoritarian state, which does not have people's protection as a priority and deliberately involves business in human rights violations. Such a context is at odds with the more often presumed model in the BHR discussion: a strong business and a weak state that cannot protect its people. Two systemic factors, which stem from the authoritarian nature of the Belarusian political regime and which worsened during the crisis are discussed in the context UN Guiding Principles on Business and Human Rights: the use of business as a tool to achieve political goals and the dependence of all institutions in the country on the authorities. One of the key conclusions of the article is that the Belarusian crisis, aggravated by the complicity of Belarus in the Russian aggression, prompts businesses to adopt a new optic on human rights due diligence and to assess their long-term risks and strategies in authoritarian countries. At the very least there is an awareness among businesses of the direct link between political and human rights risks.

Keywords: authoritarian regime; dependence on state; human rights violations; political pressure; risk assessment

1. Introduction

The topic of business and human rights (BHR) is of multidimensional character. A purely legalistic dimension is hardly sufficient to capture the multiple aspects of BHR. This is why the effective promotion of the BHR agenda on universal and local levels depends upon a variety of factors, including sociocultural context and legal, political and economic modes and practices. These factors are distinct in different regions, including Western and Eastern Europe, Eastern Europe and Central Asia (albeit the former two regions are often joined in BHR discussions on a global level).¹ Yet, the challenges of the Eastern European region also vary from country to country. For example, if we take the rule of law indicator (which is very important for effective BHR promotion), it is obvious

¹ For example, Office of the United Nations High Commissioner for Human Rights, '3rd UN Regional Forum on Business and Human Rights in Eastern Europe and Central Asia', <https://www.ohchr.org/en/events/forums/2022/3rd-un-regional-forum-business-and-human-rights-eastern-europe-and-central-asia> (accessed 1 December 2022).

that the rule of law situation in Eastern European countries that are members of the European Union (EU) creates very different challenges compared with those in Eastern European countries that are not members of the EU.²

Quite often, while promoting the BHR agenda there is a presumption of the model of a strong and powerful business and the weak state, which cannot protect its people.³ In reality, there are a number of states with a different model – a strong authoritarian state, which simply does not have the protection of its people as a priority and seeks to use all institutions (including businesses) in its political interests, purposely involving them in human rights violations. This is precisely the case in Belarus.

As a result of the present Belarusian regime's governance since 1994 (when A. Lukashenko came to power) and prior to the crisis of 2020, the primary factors negatively impacting the promotion of the BHR agenda in Belarus were: the rule of law backsliding; the total dependence of state-owned enterprises on the state; the use of businesses as instruments of political pressure, including through state-affiliated trade unions; and, the politicization of human rights, which led to human rights becoming an unwelcome topic of discussion.⁴

Additionally, independently of the nature of the regime, there were and still are several factors playing a decisive role in the BHR agenda promotion in Belarus (probably, more or less common for all post-Soviet countries): immature business culture; equating the BHR topic with philanthropy in the framework of corporate social responsibility (CSR); a low level of legal culture among citizens (the absence of 'demand from the bottom'); economic development/conditions (for instance, low income levels), which influence the motivation of workers, forcing them to prioritize stable income at the cost of tolerating employers' human rights abuses.⁵

The presidential elections of 2020 gave rise to unprecedented human rights and political crises in the history of sovereign Belarus. Although the active, 'street' phase of protests were toughly suppressed six months after they began, an atmosphere of fear, intimidation and mass repressions continue until the present day, and are just gaining momentum.⁶

In 2020–2021, experts of the Belarusian Helsinki Committee⁷ conducted research concerning the influence of political and human rights crises in the BHR context. Experts monitored the situation from July 2020 to September 2021, analysing state influence and actions aimed at aiding businesses in human rights violations; actual violations of human rights by Belarusian businesses; reactions and strategies of international business partners,

² For example, in accordance with the World Justice Project Rule of Law Index 2022, out of 140 states, Czech Republic takes position 20, Poland – 36, Lithuania – 18, Ukraine – 76 and Belarus – 99. See World Justice Project, 'WJP Rule of Law Index', <https://worldjusticeproject.org/rule-of-law-index/country/2022> (accessed 30 November 2022).

³ Such a narrative is common in the context of investment agreements and the BHR topic. See, for example: United Nations Human Rights Special Procedures & The Polish Institute for Human Rights and Business, 'Human Rights-Compatible International Investment Agreements: Consultation for Central and Eastern Europe and the Central Asia Region', Office of the United Nations High Commissioner for Human Rights (21 April 2021), https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ConceptNote_EN.pdf (accessed 1 December 2022).

⁴ Ekaterina Deikalo, Belarus: Human Rights and Business (Guide for Business, Government, and Civil Society) (Minsk: Belarusian Helsinki Committee, 2019), https://belhelcom.org/sites/default/files/bhc_human_rights_and_business_web_final_-_kopiya_compressed.pdf (accessed 5 July 2022).

⁵ Екатерина Дейкало, Елена Воробьева, и Кирилл Томашевский, 'Бизнес и права человека: постановка проблемы' в Татьяна Афонченко и др, *Междисциплинарные исследования в области прав человека* (Минск: Экосистема, 2019) 219.

⁶ Human Rights Council, 'Situation of Human Rights in Belarus in the Run-Up to the 2020 Presidential Election and in its Aftermath: Report of the United Nations High Commissioner for Human Rights', A/HRC/49/71 (4 March 2022); Human Rights Council, 'Situation of Human Rights in Belarus: Report of the Special Rapporteur on the Situation of Human Rights in Belarus, Anaïs Marin', A/HRC/77/195 (20 July 2022).

⁷ The Belarusian Helsinki Committee is one of the oldest human rights defending non-governmental organizations (NGO) in Belarus, and is the leading NGO working with a BHR agenda in Belarus.

working in/with Belarus at that moment; and the reaction of the Belarusian society. In total, 207 cases of human rights abuses by Belarusian businesses were analysed (relating to workers, clients and the local community).⁸ The full report on the results of this research was issued at the end of 2021.⁹

All of the above-mentioned factors, stemming from the authoritarian nature of the Belarusian political regime, already evident before 2020, aggravated and took new forms due to the crisis. Following the monitoring of the Belarusian Helsinki Committee, and up until the present moment, the level of repression has not subsided.

This piece aims to highlight peculiarities, relating to the realization of some aspects of the state duty to protect human rights [Pillar I of the United Nations Guiding Principles on Business and Human Rights (UNGPs)] in the context of the authoritarian regime in Belarus in the situation of the crisis following 2020.

II. The Use of Businesses as a Tool to Achieve Political Goals

Belarusian authorities are still using the Soviet human rights narrative (particularly in relation to economic, social and cultural rights); they view human rights not through a prism of the ‘duty bearer–rights holder’ concept, but as a gift, a good that a ‘socially oriented’ state gives to a person and expects their loyalty in return. This is precisely what socialism in the Soviet and post-Soviet model means. Employer–employee relations in state-owned enterprises are one of the main areas where such a ‘demanding loyalty’ approach is practised.¹⁰ State-owned businesses in Belarus are strongly dependent on political power. Consequently, all such businesses are *ipso facto* involved in human rights abuses, being used as tools of political pressure.

In the context of the post-electoral crisis, the political pressure manifests in the following forms: the required administration of such enterprises to conduct ‘preventive conversations’ with employees about their protest activities; the requirement to ensure the presence of the required amount of workers at the pro-government political campaigns; the requirement to involve employees in the electoral process;¹¹ the involvement of high state officials in intimidating employees to suppress protest attitudes; and the use of security forces (which are usually called by the top management of enterprises) to suppress protest actions and strike movements at enterprises in order to ensure uninterrupted working processes.¹²

Generally, obstacles to the activities of independent trade unions are one of the basic problems of workers’ rights abuses in Belarus, precisely because the creation of any

⁸ Information was collected from open sources (media, information from civil initiatives, etc.), as well as from personal messages of the victims of businesses’ human rights abuses to the experts of the Belarusian Helsinki Committee.

⁹ Ekaterina Deikalo and Aleh Hulak, *Business and Human Rights in Belarus: The Context of Political and Human Rights Crisis 2020–2021: Analytical Paper* (Minsk: Belarusian Helsinki Committee, 2021), <https://belhelcom.org/en/document/business-and-human-rights-belarus-context-political-and-human-rights-crisis> (accessed 30 June 2022).

¹⁰ *Ibid*; Deikalo, note 4, 70–102.

¹¹ The Electoral Code of the Republic of Belarus maintained an anachronism of the Soviet era: Article 35 suggests that representatives to elective commissions can be nominated (in addition to public organizations and political parties) by the labour collectives of organizations. Taking advantage of the existence of such a norm formally enshrined in the law, as well as the dependence of enterprises on the state, the authorities use this provision in order to influence the counting up of the voting results. Thus, businesses are involved in the violation of both the rights of workers (who are forced to perform functions beyond the scope of their working function and falsify the results under threats of dismissal) and the rights of voters.

¹² The last two forms were used at large state-owned plants where, due to independent trade unions, mass protests movements took place, which the authorities saw as a special threat. For details, see Deikalo and Hulak, note 9, 19–20.

independent power poses a threat from the authorities' point of view. The Federation of Trade Unions of Belarus (the largest trade union federation in the country), which is fully affiliated with the state, presented through its branches in each state-owned enterprise and plays a key role in exerting pressure on employees.¹³ After 2020, the persecution of independent trade unions and strike committees as organizers of strikes intensified.¹⁴ Two of the top three grounds for discriminatory dismissals are connected with trade union activity and strike movements.¹⁵ As of January 2023, approximately 40 representatives of independent Belarusian trade unions are imprisoned, including the chair and vice-chair of the Belarusian Congress of Democratic Trade Unions. Six of them are already sentenced to terms up to nine years in prison for their trade union activities.¹⁶

In November 2022, the International Labour Organization (ILO) adopted the decision to apply Article 33 of the ILO Constitution with respect to Belarus.¹⁷ This is the second time in the history of the ILO (the first was in 2000, with respect to Myanmar).

The Russian invasion of Ukraine, supported by Belarusian authorities, created a second 'layer' of propaganda from the high officials of the law enforcement agencies for employees of large state-owned plants. For example, the Minister of Defense, the Secretary of the Security Council, the Head of the KGB, the Head of the State Border Committee and the Minister of Economy personally addressed the workers of 'BELAZ'¹⁸ and explained the 'right' way in which to understand the situation.¹⁹

Private businesses usually face less harsh and direct pressure from the state. However, the post-electoral situation led to the extension of repressive practices to private enterprise. Private companies were required to guarantee pro-government trade union representation under the threat of liquidation.²⁰ Moreover, private enterprises started to receive state guidance on the assortment of goods, entailing the prohibition of the selling of goods with images of Belarusian national symbols,²¹ or goods accenting illegitimate actions of authorities,²² thereby limiting customers' freedom of expression.²³ Additionally, the authorities were forcing companies to include official symbols of the state in the assortment of goods.²⁴

¹³ For the general situation with trade unions in Belarus in the BHR context, see Deikalo, note 4, 91–99.

¹⁴ For example: International Labour Organization, *Measures Taken by the Government of the Republic of Belarus to Implement the Recommendations of the Commission of Inquiry – 398th Report of the Committee on Freedom of Association* (Geneva: ILO, 2022).

¹⁵ Deikalo and Hulak, note 9, 22–28.

¹⁶ Беларусский Хельсинкский Комитет, 'Обратились в специальные процедуры ООН в связи с продолжающимися репрессиями в отношении независимых профсоюзов' (9 января 2023), <https://belhelcom.org/ru/news/obratilis-v-specialnye-procedury-oon-v-svyazi-s-prodolzhayushchimisya-repressiyami-v-otnoshenii> (доступ 9 января 2023).

¹⁷ International Labour Organization, *Decision Concerning the Consideration of Any Further Measures, Including Those Foreseen in the ILO Constitution, to Secure Compliance by the Government of Belarus with the Recommendations of the Commission of Inquiry* (Geneva: ILO, 2022).

¹⁸ Belarusian Automobile Plant.

¹⁹ 'Силовики самого высокого ранга продолжают «турне» по предприятиям с политинформацией. К ним примкнул министр экономики', *Зеркало* (12 октября 2022), <https://news.zerkalo.io/life/23823.html?c> (доступ 6 декабря 2022).

²⁰ This means that companies would cease to exist as a result of the decision of the authorities.

²¹ Namely, the white-red-white flag and the historical Belarusian coat of arms 'Pahonia'.

²² Including in a satirical manner. For example, the T-shirt print with an image of 'autozak' (a special car of the law enforcement services, which is used for the transportation of those detained during demonstrations) and the inscription 'Welcome to Belarus'.

²³ As customers' options to choose and to have (buy) goods, including those expressing their political views and beliefs, are purposely restricted by authorities through the provision of such guidance to the stores.

²⁴ Deikalo and Hulak, note 9, 16 and 18.

Labour laws are often used as a tool of pressure. Since the events of 2020, the provisions of the relevant laws were tightened in order to increase the dependence of the employee on the will of the employer, whilst also suppressing protest activity.²⁵ This is also one of the forms of involving businesses in human rights violations, as businesses are compelled to comply with these formal requirements of the law, even when trying to act in good faith.

The state monitors the political loyalty of businesses (mostly private ones, because state-owned business loyalty usually exists *ipso facto*) and puts pressure on disloyal businesses, which may even lead to their liquidation.²⁶

Neither businesses, nor employees or clients, can challenge the authorities in the court on cases with ‘political context’. This is a result of all state institutions (including legal) having been systematically built (or rebuilt) and organized for the last 29 years in a way such as to not create any ‘threat’ to the power of the president.

III. Dependence of all Institutions in the Country on the Authorities

Such a factor reflects the authoritarian nature of the power and is in principle typical for any authoritarian regime. The situation in Belarus after 2020 is characterized by the highest degree of failure of the legal system or, effectively, a ‘legal default’. The post-election situation (heated by previous failed actions of the authorities during the COVID-19 pandemic)²⁷ led to the final rupture of the social contract between society and the state. The further maintenance of power can only be carried out by force and by maintaining an environment of fear and intimidation. What does this mean for the BHR context?

First, new forms of vulnerability emerged in business–person relationships. In addition to traditional ones (women, children, people with disabilities, migrants, refugees, people belonging to national or sexual minorities, etc.), new categories of vulnerable groups appeared: protesters, people expressing dissenting views and ideas (including when the dissent is expressed in protest symbols), members of independent trade unions/independent civil society initiatives, people who have been subjected to administrative prosecution on charges of participating in protest actions²⁸ and people who look a particular way (red and white clothes, jewelry, tattoos with national Belarusian symbols, etc.).²⁹ The war added an additional form of vulnerability to existing ones – an anti-war position, expressed in any form.³⁰ Due to changed labour legislation (see section II of the present

²⁵ Ibid, 14–15. For instance, employers were afforded increased possibilities for arbitrary dismissals (which are now formally legal because of such laws), including the possibility of dismissal for absence in a workplace due to administrative arrest.

²⁶ Deikalo and Hulak, note 9, 64–69.

²⁷ Ekaterina Deikalo and Aleh Hulak, ‘Covid-19, Business and Human Rights: Challenges and Behavioral Strategies: Analytical Note’, *Belarusian Helsinki Committee* (31 March 2020), <https://belhelcom.org/en/document/covid-19-business-and-human-rights-challenges-and-behavioral-strategies-analytical-note> (accessed 30 June 2022).

²⁸ Since 2021, many employers (especially in state-affiliated organizations) ask potential employees to fill in the form in which there are questions about detentions or having been brought to the court on administrative matters (the most popular ground on which more than 40,000 people were arbitrarily detained since the beginning of the protests because of the violation of the Law on Mass Events, which in itself violates the standard of peaceful assemblies, as has been recognized more than once by UN Human Rights Committee).

²⁹ For example, we have reported on the case in which the head of a private business enterprise had issued an order prohibiting the wearing of white bracelets (one of symbols of protests, suggested by S. Tsikhanouskaya) as a ‘symbol of hybrid war’.

³⁰ Among the reasons for the arbitrary detention of anti-war protesters are: the launch of blue and yellow balloons; blue and yellow clothes and symbols; flowers near the Ukrainian embassy; a sound signal during a rally, etc. See Viasna, ‘Crackdown on Antiwar Protests in Belarus Cities and Small Towns’ (9 April 2022), <https://spring96.org/en/news/107597> (accessed 2 December 2022).

piece), detentions and administrative arrests of anti-war protesters led to additional vulnerabilities for these people as employees.

Second, there is a sharp increase in risk for any business (even for those who try to act in good faith) to be involved in human rights violations due to the actions of the state authorities. The latest illustrative example is the situation with so-called ‘confession videos’ – that is, video footage of detainees, forced to confess crimes against the regime that they did not commit. Often, people are forced to record such videos under pressure or following torture and other inhumane and degrading treatment. There are cases in which such videos feature representatives of vulnerable groups (for instance, LGBTQ+ individuals – who, in addition to forced confessions are subjected to public outing – and children). This adds an additional layer of human rights abuse. Publishing such videos is a common practice of Belarusian law enforcement agencies. The videos are distributed via different open *Telegram* and *YouTube* channels of state media and pro-state bloggers and are an inalienable part of propaganda. Usually, they are accompanied by radical forms of hate speech towards protesters. In such cases, four Big Tech platforms were involved in human rights violations (*Telegram* and *YouTube* thus became directly involved in the wrongdoing, and *Apple* and *Google* became involved via supply chain mechanisms as marketplaces, where *YouTube* and *Telegram* can be acquired, giving users access to such videos).³¹

Third, in the case of Belarus, the absence of the separation of powers entails not only the dependence of judicial and legislative branches on the executive, but also the dependence of all branches on the will of one person. The Belarusian regime is characterized by a high degree of personification of power, which leads to unpredictability of all decisions (especially when the authorities are trying to preserve power and establish dominance in the current period of turbulence). Such decisions could also affect businesses, including the ones trying to act in good faith. For example, in January 2021, the brands *Nivea Men*, *Škoda* and *Liqui Moly* refused to sponsor the World Ice Hockey Championship, which was to be held in Belarus, due to human rights violations by the host country. In response, the Belarusian Council of Ministers has adopted the Decision ‘About Special Measures Application’ and imposed a half-year ban on the import and sale of goods of these brands, claiming the ‘need to ensure the protection of national interests, taking into account unfriendly actions towards the Belarusian people’.³² Such practice cannot be ignored by other companies which are going to take similar decisions, serving as an additional factor in delaying such decisions.

IV. Conclusion

The crisis demonstrated that the state and the authorities have completely failed in fulfilling their obligation to protect human rights as defined by Pillar I of the UNGPs and by the state’s

³¹ In January 2022, the Belarusian Helsinki Committee sent a letter to *Telegram*, *Apple* and *Google* with respect to such videos recorded with LGBTQ+ people: Belarusian Helsinki Committee, ‘Telegram – Google – Apple. Human Rights Violations and Promotion of Violence in Supply Chain’ (20 January 2022), <https://belhelcom.org/en/news/telegram-google-apple-human-rights-violations-and-promotion-violence-supply-chain> (accessed 2 December 2022). In May 2022, the Belarusian Helsinki Committee appealed to the same platforms with respect to such videos recorded with children: Belarusian Helsinki Committee, ‘Violation of Children’s Rights in the Belarusian Segment of Telegram’ (12 May 2022), <https://belhelcom.org/en/news/violation-childrens-rights-belarusian-segment-telegram> (accessed 2 December 2022). The applications were successful. Although the Belarusian Helsinki Committee did not receive a direct answer, all listed materials were deleted and, following the second letter, the main propagandistic pro-state *Telegram* channel, which had been disseminating such videos, was deleted too.

³² Совет Министров Республики Беларусь, ‘О применении специальных мер’ (23 апреля 2021), <http://www.government.by/ru/content/9813> (accessed 1 June 2022). The ban has been prolonged several times. Now it is in force until 4 May 2023 and affects *Liqui Moly*, *Škoda Auto* and *Beiersdorf* (trademarks *Nivea*, *Eucerin*, *La Prairie*, *Labello*, *Hansaplast*, *Florena*, *8x4*, *Skin Stories*, *Gammon*, *Tesa*, *Chaul*, *Coppertone*, *Hidrofugal* and *Stop the Water While Using Me*).

direct human rights obligations. The peculiarity of the situation is that the state is not just failing to fulfil its obligations due to negligence or a lack of resources, etc. Rather, the state is deliberately and consciously acting in contradiction to human rights values and does everything that it can to create conditions for the violation of human rights by businesses, because it is necessary for its (the state's) own political goals. The Russian invasion of Ukraine in February 2022, the war and the participation of Belarus through the granting of its territory for the aggression, only emphasized the relevance of all problems and factors deriving from the authoritarian system in Belarus.

In this connection, it is vitally important to understand that any business enterprise that currently operates in Belarusian jurisdiction or that has business ties with Belarusian companies *ipso facto* is risking its involvement (directly or indirectly) in violations of human rights. In November 2020, a coalition of Belarusian human rights NGOs issued an appeal to international business enterprises in connection with the Belarusian crises,³³ stressing the necessity to pay special attention to human rights risk assessment while working in/with Belarus in this respect.

On the one hand, generally, the case of Belarus demonstrates the different challenges facing businesses working in authoritarian contexts but acting in good faith. This includes the dilemma of whether to stay and try to influence the situation or to leave. In their recent report, experts of the Norwegian Helsinki Committee describe the cases of three big Norwegian companies working in authoritarian states (including the case of *Yara* in Belarus in 2020–2022) and point out that in such countries ‘even companies with the best of intentions and policies may find themselves in a situation where they face nothing but difficult choices’.³⁴ They argue, nevertheless, that it does not mean that companies should not be doing business in such states, because ‘international companies that respect human rights in words and deeds can be a force for good’.³⁵ It is difficult not to agree with this, because in the situation of a state that has completely ‘failed’ (in many senses), such as in the case of Belarus, a company, sticking to human rights values, using the leverage of partnership, etc., can indeed sometimes be the only ‘hope’ and instrument for the people trying to protect themselves.

On the other hand, since the war in Ukraine started, one can see that reputational risks for businesses matter more than ever. A number of businesses left Russia and Belarus even without (or before) the threat of sanctions. Yet, it is difficult to say whether this is an immediate reaction to the shocking war context or an attempt to systemically rethink their work within authoritarian regimes. That is the big question, which definitely has to be pursued in the research field. The Belarusian crisis, aggravated by the war in Ukraine, and the war itself, certainly make businesses choose another optic for human rights due diligence and assess their long-term risks and strategies in authoritarian countries. Primarily, such re-assessment can successfully be made by taking a more proactive position in assessing political risks, so that at least the direct link between political and human rights risks is not ignored.

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³³ Belarusian Helsinki Committee, ‘Appeal to Business by Belarusian Human Rights Organizations in Connection with the Human Rights Crisis in Belarus’ (5 November 2020), <https://belhelcom.org/en/news/appeal-business-belarusian-human-rights-organisations-connection-human-rights-crisis-belarus> (accessed 10 June 2022).

³⁴ Gunnar Martin Ekeløve-Slydal and Ivar Dale, *Doing Business in Authoritarian States: Tackling Dilemmas While Preserving Integrity* (Oslo: Norwegian Helsinki Committee, 2022), <https://www.nhc.no/en/doing-business-in-authoritarian-states/> (accessed 30 November 2022).

³⁵ *Ibid.*, 77.