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Rights and Security of a Person in Belarus

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Having regained its independence, Belarus had a relatively democratic political system during the period of 1992-1996. The constitutional referendum of November 1996 dealt a deathblow to it. Its results consolidated the actual absolute power of Aleksander Lukashenko. The leader of Belarus concentrated all state power in his hands, putting de facto the end to the system of separation of powers, although retaining it de jure¹.

Having come to power as the result of the only free presidential elections of 1994, A. Lukashenko faced some challenges, which demanded simultaneous reactive actions. The State of Belarus was in dysfunction. In the midst of economic hard times, there was the problem of criminalization, the process of merging of business, officials and organized crime was quite evident. Reduction in armed forces from 250 thousand in 1992 to about 100 thousand by the end of 1994 released tens of thousands of officers into "nowhere", many of which were battle-hardened. Some of them, unfortunately, descended to a life of crime. The Belarus army itself was struck by military hazing, which sometimes ranged up to open threats of violence and physical attack from soldiers towards officers, with the first refusing to follow the requirements of the statutes. All of this was complicated by the internal political struggle.

A. Lukashenko, riding to power on the wave of populism, continued to maintain the image of a people's president, a defender of a common person. The establishment of an absolute rule enabled to do away with organized crime quite quickly. A sudden disappearance of a number of active members of the organized criminal com-

munity of Belarus^{2,3} contributed to the process. Officially, the state has nothing to do with it; however, the authorities do not deny the fact of extralegal executions. The crime rate, as well as combating political opposition, caused a rapid increase in the number of militia and secret service agencies. That allowed to employ a significant part of the officers selected for redundancy.

The situation was ambivalent: on the one hand, the development of the government apparatus promoted the increase in the level of security of a person; on the other hand, a person was deprived of political rights and freedoms.

Turning now to consideration of the situation with the security of a person in Belarus, we should point out three clusters of issues to be reviewed:

1. General-political context of the situation.
2. State of contingent of enforcement structures.
3. State of a person in terms of ensuring its safety.

The political situation in Belarus

According to the results of the elections to the National Assembly in 2004, no candidate from the democratic forces received a deputy's seat in the parliament. This situation continued until 2016, when the authorities de facto appointed one representative of the opposition forces to be a deputy. The Lower Chamber of the National Assembly has in total 110 members. At present, even a hypothetical possibility of peoples influence on policy in the sphere of ensuring national and public security has been lost. Actually, the institute of elections in Belarus is of a decorative

1. The Constitution of the Republic of Belarus of 1994 (as subsequently amended in view of the changes adopted at the Republican referendums dated November 24, 1996 and October 17, 2004), access point: <http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>.

2. President Lukashenko is not afraid of "law", access point: <http://kommersant.ru/doc/289400>.

3. Lukashenko admitted that in the 90-ies he used to order to shoot bandits on the Moscow-Brest road, access point: https://www.gazeta.ru/auto/news/2013/10/11/n_3246405.shtml.

nature, with the representative bodies, including the Parliament, performing only the function of legitimization of the will of A. Lukashenko and those officials appointed by him.

The existing security system in Belarus is based on the personal views of the country's leader. Its main objective is to preserve the existing political regime. This situation is hiding behind such euphemisms as "protection of constitutional order", "ensuring public order" or "maintaining social and political stability." In the mind of the Belarus leader, basic rights and freedoms of an individual must be limited to the provision of physical security and some set of purely social guarantees (access to education, health care, support in case of disability). Whereby the current authorities of Belarus do not recognize a citizen as a political subject.

The rule of law and the equality of citizens before law are proclaimed officially, while protection of the rights and freedoms of an individual is indicated as the primary task of the state (Article 2 and Section 2 of the Constitution of the Republic of Belarus). At the level of relations of individuals between themselves or with the lower state authorities this statement in most cases is observed. But only until the interests or needs of an individual contradict the interests of the state. In the form in which these interests are understood by the top political leaders of the country. Within the existing legal system of Belarus legal regulations and procedures are important, but not crucial.

The Belarus regime, not being economically and technologically self-sufficient, cannot completely ignore international norms and standards. And it is forced to partially simulate following them. And partially to follow. But only in those cases which do not endanger the invariability of the existing political system.

The practice of introduction of amendments to legislation in the area of national security as fait accompli deserves a special mentioning. It means some innovations are implemented in the everyday activities of law enforcement agencies first.

And often without any formalization, even in departmental acts. And then the corresponding changes are made to legislation. Belarus is not a legal state in the real sense of the word, that is why the practice of illegal actions is quite popular.

The Constitution containing a number of regulations which guarantee rights and freedoms of man and citizen, is only partly a document of direct effect. The practice of actions of Belarus authorities starts on the basis that with regard to rights and freedoms, the fundamental law is a declarative document. And with regard to the duties of a citizen towards the state, the Belarus regime treats it as a document of direct effect⁴.

A wide range of repressive tools have been created in Belarus, and they are periodically put into action. It is worth mentioning that repressions are politically motivated and intend to intimidate political opponents of the regime, and not society as a whole.

The Belarus authoritative powers are characterized by the presence of the only monosubject – president A. Lukashenko. This has an impact on all spheres of socio-political life of the country. Including ensuring security. It should be borne in mind that not only and not so much the rules of formal legislation, as law enforcement practice and general political context of the situation make a difference in Belarus.

Situation inside the Belarus security sector agencies

During the last 22 years, legislation has been gradually expanding the powers of the power structures of the Republic of Belarus, which contingent has quite a wide range of rights and standard obligations: legitimacy, respect of the person's honour and dignity, humanism, rule of law, etc. (*further in the text in relation to the contingent of enforce-*

4. The Constitutional Court found no violations of law in the Decree "On Social Parasitism", access point: <http://naviny.by/new/20170315/1489555204-konstitucionnyy-sud-ne-nashel-narusheniy-zakona-v-dekrete-o-tuneyadstve>.

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ment structures in Belarus, which has a military or special rank, we will use the term "employee").

The paradox of the current situation in Belarus is that persons engaged in the security procedures are much more restricted in their own rights than ordinary inhabitants. This is not about generally accepted restrictions associated with work activities in the national security system (for example, restriction on the right to strike and political activity). In practice, the Belarus law-enforcers are subject to obligations, which are in principle unlawful and have signs of violation of the fundamental rights of a man and of a citizen.

Security sector agencies traditionally suffer a shortage of personnel at lower positions. That carries an additional burden on existing personnel, which turns into the increase of working hours. However, overtime is often not compensated, the employees go to work after their daily duty, as there is no one to replace them, and the current volume of work does not allow for a proper rest. Direct management is reluctant to compensate overtime with free days, giving as a reason that the command subordinates took the oath and therefore must perform their duties in defiance of their personal time. It is a common practice to call the employees to their workplaces all of a sudden in their official rest days, recall them from vacation, and it is often not related to needs of the service. In fact, we are talking about forced labour, which is contrary to Articles 41 and 43 of the Constitution of Belarus.

The practice of disciplining of various kinds and deprivation of a bonus payment is worth a particular mentioning. Thus, awarding the management of units of law enforcement agencies by the results of a calendar year for saving budgetary resources is quite common in Belarus. Such saved funds are formed also at the expense of taking away a bonus from employees. And that, in its turn, encourages punishment even for minor offenses.

A separate issue is the culture of relationship between a commander and a subordinate. Boorish attitude to subordinates, their humiliation and

insult are common practice. Often it happens in public in front of all the contingent of the unit.

Formally, disciplinary penalties and behaviour of an immediate commander may be appealed to military unit superiors. However, in practice such actions are actually useless: cancellation by military unit superiors of the decision of a lower commander, or more over, his punishment upon the complaint of the command subordinate, is seen as undermining the authority of the management hierarchy.

Compulsory subscription to institutional editions (where they exist) is violation of the rights of employees of law enforcement agencies. Moreover, these publications are often unreasonably expensive. To ensure that all the circulation of departmental publications is spread, the employees may be required to arrange the subscription of other persons to them, where such people may even not be employed by the system of law enforcement agencies: local authorities, petty offenders (minimum punishment in case of subscription).

Mandatory money collection for various kinds of events, regardless of whether they are of interest to the staff, are also common.

Officers of enforcement agencies are often forced to enter various pro-government NGOs.

A separate issue is the interaction of law enforcement agencies and the Orthodox Church. As a result, employees must often participate in the activities of a religious nature during their working hours, regardless of their wish, which is a direct violation of Article 9 of the Law "On the Status of Military Servicemen"⁵. Moreover, Orthodox priests participate in military ceremonies. Recently the practice of involving Catholic priests has become popular as well. However, it is worth mentioning that the rate of churching in Belarus amounts to only 6%⁶. At the same time, the church is indepen-

5. The Law of Belarus "On the Status of Military Servicemen", access point: http://www.mil.by/ru/all_about/normative_base.

6. Religion in Belarus, access point: https://ru.wikipedia.org/wiki/Религия_в_Белоруссии.

dent of the state and the institute of chaplains neither exists nor is planned in Belarus.

It is worth pointing out, that the Belarus law enforcement agencies are noted with quite a high level of discipline, control and political loyalty to the leadership of the country. It would be impossible to achieve a high level of overall security in the country without that⁷. And controllability of law enforcement structures is ensured by an integrated control system.

There are several possibilities of monitoring the activities of law enforcement agencies and their staff. Baseline is control of direct supervisors. According to Military Regulations, a direct supervisor/commanding officer shall control and be responsible for strict compliance of his subordinates with the requirements of legislation, including in the field of protection of the rights and freedoms of an individual^{8,9}. In practice, however, this control is not always effective. Red tape in law enforcement agencies often leaves the direct supervisors no time to implement full control over the activities of their subordinates.

The second level of control is interdepartmental, which is carried out by the structures of a higher rank.

Further on, the activities of security agencies are controlled by their own internal security departments and by the KGB.

It is worth mentioning, that the above types of control are primarily aimed to combat and prevent offence against the interests of the service. They are also developed to ensure loyalty, dependence

and controllability of the law enforcement unit.

There is also a system of supervision by the public prosecutor. Which is largely of a bureaucratic nature, and is aimed to ensure the implementation of the targets of the law enforcement structures activity. Sometimes it acts as a response to the complaints or the facts of illegal activities of law enforcement officials, which got out. In practice, there is often a merge of public prosecution office and law enforcement agencies on a low level. And sometimes of local authorities and businesses, leading to covering each other's backs and actually harbouring negative side of things. One of recent examples is the situation in Gomel, where KGB officers, executive authorities and business merged¹⁰. As a result, KGB officers commissioned by merchants conducted illegal gathering of information and wiretapping of competitors negotiations.

The highest supervisory body is the President of the Republic of Belarus, or his authorized bodies, or the Government of Belarus, appointed by the President^{11,12,13}.

Belarus legislation provides for litigation of the decisions and actions of law enforcement agencies with respect to an individual or a legal entity. In practice, however, the percentage of settlement of grievances is not high; an unspoken presumption of good faith of the representatives of the state is in force.

The ideological apparatus, which is formed in all law enforcement agencies of Belarus, is also worth mentioning. Together with quasi-social structures, where participation of Belarus law-enforcers is mandatory, ideologues are shaping the system aimed to

7. We are on the list of the most secure countries in the world, access point: <https://www.sb.by/articles/my-v-spiske-samykh-bezopasnykh-stran-mira.html>.

8. Disciplinary Regulations of Law Enforcement Agencies of the Republic of Belarus, access point: [http://www.pravo.by/pdf/2003-62/2003-62\(004-011\).pdf](http://www.pravo.by/pdf/2003-62/2003-62(004-011).pdf).

9. Decree of the President of the Republic of Belarus, dated June 26, 2001, No. 355 "On Approval of the Basic Military Regulations of the Armed Forces of the Republic of Belarus", access point: <http://prokuratura.gov.by/sm.aspx?guid=90916>.

10. The situation in the field of national security and defence (April 2014), access point: <https://www.bsblog.info/polozhenie-v-oblasti-nacionalnoj-bezopasnosti-i-oborony-aprel-2014-goda>.

11. The Law of Belarus "On State Security Bodies of the Republic of Belarus", access point: <http://kgb.by/ru/zakon390-3>.

12. The Law of Belarus "On Law Enforcement Agencies of the Republic of Belarus", access point: http://etalonline.by/?type=text®num=H10700263#load_text_none_1_.

13. The Law of Belarus "On the Armed Forces of the Republic of Belarus", access point: <http://www.pravo.by/document/?guid=3871&p0=V19201904>.

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deal with not only indoctrination of personnel and its education in the spirit of loyalty to Belarus supervisors, but also with the control over personal life of employees of law enforcement agencies.

Security of a person

The Belarus authorities have at their disposal a vast range of repressive tools. It is worth emphasizing, however, that we do not mean repressions in general, but the repressions of politically active part of society. The system of security of Belarus is aimed primarily to ensure political security of the ruling regime.

Due to the lack of civilian democratic control, the activities of law enforcement structures are not transparent. There are pro-forma Public Councils at the law enforcement structures that actually represent a set of persons, who are absolutely loyal to the authorities, or even civil servants, whose main task is to create some semblance of democracy. Actually, it is a complete sham.

A large range of information relating to law enforcement agencies is not published under the Law "On State Secrets"¹⁴.

Although law enforcement agencies guidance documents formally declare commitment to protection of fundamental rights and freedoms of an individual, in practice we encounter regular evidence of their oppression.

Thus, employees of law-enforcement agencies often operate under the formula "no one is above the law, but some have privileges." It means that in relation to persons, leading an anti-social lifestyle, the behaviour which is unacceptable in relation to socialized citizens is considered to be acceptable.

In Belarus they adopted a number of administrative and criminal statutory provisions that are

14. The Law of Belarus "On State Secrets", access point: <http://kgb.by/ru/zakon170-3>.

repressive against dissidents: Articles 358¹ "Intelligence activities", 361 "Calls for Actions Aimed to Cause Damage to the National Security of the Republic of Belarus", 369¹ "Discrediting the Republic of Belarus", 369² "Receiving Foreign Donations in Violation of the Legislation of the Republic of Belarus" of the Criminal Code; Articles 23.34 "Violation of Procedure for Organisation and Holding Mass Events", 22.9 "Violation of Legislation on Mass Media" of the Code of Administrative Offences.^{15,16}

Another story is unjustified and disproportionate use of violence by law enforcement officers against participants and just random witnesses of political protests. In this case, law-enforcers have almost complete indulgence for violation of law. Though in some cases of excess use of force you can often achieve at least some satisfaction, if violence is used in connection with political activity, then the system of covering each other's backs comes into force. Criticism in relation to the activities of law-enforcers is met with accusations in an attempt to discredit the law enforcement structures with the aim to destabilize the political situation in the country.

At the same time, as it was mentioned above, general crime rate in Belarus is quite low. This is connected both with the development of the system of law enforcement agencies and their high efficiency, and rapid economic growth during the period of 2001-2013.

Moreover, the Belarus authorities have made considerable efforts to improve the image of the law enforcement structures of Belarus abroad. The country is an active participant in the global fight against organized crime. And as to fight against human trafficking – Belarus is on top of the list.

In addition, in recent years the Belarus law-enforcers have been putting considerable efforts to pre-

15. The Criminal Code of the Republic of Belarus, access point: http://etalonline.by/?type=text®num=HK9900275#load_text_none_1_.

16. Administrative Violations Code of the Republic of Belarus, access point: http://etalonline.by/?type=text®num=Hk0300194#load_text_none_1_.

vent domestic violence and protect children, combat cybercrime and illegal trafficking of synthetic drugs.

Conclusions

The situation concerning security of a person in Belarus is ambivalent. On the one hand, the existing system of law enforcement agencies effectively provides internal and external security. On the other hand, its priority is to ensure the integrity of the existing political regime. A low level of general crime rate became possible not least due to the long period of rapid economic growth and rising incomes¹⁷.

The situation with security of a person in Belarus is characterized by the following features:

- the security system is not transparent and is absolutely beyond the control of the society;

- the democracy of the system has a declarative nature, that is often a sham or, at best, used in an extremely selective way;
- the rule of law and equality of citizens before law are proclaimed, but not fully implemented;
- the state deprives its citizens of the political subjectivity;
- employees of law enforcement structures are limited in their civil rights beyond the law, although this fact is not evident for the society;
- except for the restrictions as to political rights, the situation with security of a person in Belarus can be characterized as generally favourable.

17. Incomes of the Belarusians have set a new abysmal record. Is there a reason for panic?, access point: <http://www.kp.by/daily/26621/3639603>.

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