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The condition of NGOs and civil society in Belarus

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History and legal background

When in 1991 Belarus gained its independence from the USSR, Belarusian civil society could be characterized as typical for a post-Soviet third sector. On the one hand, a large number of public associations had existed since Soviet times, but they were in fact closely associated with the state and the Communist Party, rather than with the population. This group comprised either pro-government or state-founded organizations whose aim was to control and influence state ideology, morality, and the upbringing and education of a maximum amount of Soviet citizens. To a great extent, practically all “public associations,” including those which operate in sports, culture and education and involve the participation of people of

various ages and social statuses, fell under this umbrella. This form of organization – a “public association” – is still the most popular type of a civil society organization in Belarus.

On the other hand, some organizations originated from “informal” groups dating back to samizdat activities but later established their associations, thanks to the years of perestroika and glasnost. They were devoted to the revival of Belarusian national traditions, culture and memory. Such organizations enjoyed prosperity and gained real popularity during the first years of Belarus’s independence in the early years of the 1990s, whereas the first group was facing an ideological crisis as the communist ideology which used to unite and support them did not exist anymore.

The situation changed after the first Belarusian president, Aliaksandr Lukashenka, was elected in 1994. Gradually acquiring more and more power and striving to obtain personal control over public, political and social life, Lukashenka used the entire range of instruments at his disposal to achieve his goals. Among them were the elimination of his political opponents, changing the constitution and external policy priorities through state referendums, openly criticizing foreign states and their official representatives, and expanding his personal authority over mass media, education and civil society organizations.

As early as 1996, the Open Society Foundation, which had been supporting many third-sector and educational initiatives in Belarus, was expelled from the country. This was followed by demands that several other donor organizations cease to exist. At the same time, the Belarusian authorities made use of another powerful instrument – Belarusian legislation – which after the formation of a new parliament loyal to the Belarusian president was accountable solely to the chief of state.

The state body which is responsible for the registration of non-governmental organizations and political parties in Belarus is the Ministry of Justice and the chief directorates of justice at the oblast executive committees and Minsk. The National Department for Religious Affairs is responsible for the registration of religious organizations. Not only were they more reluctant to register new organizations and political parties, they also amended key laws regulating the activities of Belarusian NGOs. Thus, the once progressive Law “On Public Associations” of 1994 was amended in 1999 and 2005, gradually limiting the scope of NGOs’ ability to function in the country.

Presidential Decree No. 2 of 16 January 1999 banned all organizations not registered by the government. Later this ban was introduced to the Law “On Political Parties” and the law “On Public Associations” together with administrative penalties for the violation of these laws ranging from a fine to arrest for up to fifteen days. Two other amendments of the Criminal Code of Belarus made operating on behalf of an unregistered organization or political party even more risky. On 15 December 2005, Article 193.1 entitled “Illegal Organization of a Public Association, a Religious Organization or a Fund, or Participation in Their Activities” was enacted. It proscribed punishments of a fine or imprisonment for up to two years for activities in any non-registered organization, fund or political party. In addition, Part 2 was added to Article 193 of the Criminal Code, envisaging up to three years of imprisonment if activities that violate citizens’ rights were carried out by a non-registered party or association.

Periods of oppression over Belarusian civil society are, to a great extent, cyclic and usually coincide with Lukashenka’s struggles with his political rivals. This becomes apparent when one takes into consideration the years of his harshest struggles with the political opposition which typically take place just before and after presidential elections in Belarus. For instance, the 1999 amendment to the Criminal Code took place in the year when the last major politically motivated anti-governmental demonstrations took place.

At the time, the opposition political parties, quite strong and enjoying popular support, tried to organize presidential elections, undermining the results of a constitutional referendum of 1996 which renewed the presidential term of the incumbent in 1996 as opposed to 1994, when he was elected. The amendment of 2005, in turn, was

adopted a year before the 2006 presidential elections, when civil society associations traditionally exert efforts to encourage participation, often as partners of political parties.

In line with this timeline, many non-governmental organizations were liquidated or suppressed, even though many of them do not necessarily carry out any political activities. One of the most notorious recent cases took place in 2011 during the period of another wave of suppression imposed on Belarusian civil society after particularly numerous anti-government demonstrations in the aftermath of the 2010 presidential elections. Aliaksandr Lukashenka won yet again, despite the fact that the elections were not recognized as integral, fair and transparent by the OSCE and partner European organizations which had come for election observation. Having arrested seven out of the nine presidential candidates, the Belarusian president also imposed severe measures over Belarusian political parties and NGOs. Ales Bialiatski, the head of one of the most famous human rights organizations – “Viasna” – was arrested in August 2011 and spent almost three years in jail after the Belarusian Ministry of Justice received information from colleagues in Lithuania and Poland confirming the receipt of foreign funds without their declaration or taxation in Belarus.

The Bialiatski case throws light on an important peculiarity regarding the functioning of civil society organizations in Belarus. Due to Belarusian legislative restrictions, public associations and political parties are prohibited from receiving financial support from abroad. This, as well as other provisions introduced by presidential decree that were aimed at restricting the ability of Belarusian civil society to function forced many organizations to move their activities

abroad or set up bank accounts in European banks. This enables them to continue their activities, as the Belarusian society is afraid to provide open financial support to the majority of NGOs for fear of being persecuted by the authorities who, in turn, do not hide their views and often call Belarusian civil society the “fifth column” in the public mass-media.

Belarusian civil society and NGOs from 2015 to today

After the last crackdown in 2011, the Belarusian civil society has gradually rebuilt its structures. In the meantime, a new restrictive Law “On Non-Profit Organizations” was drafted. Additionally, by the beginning of the last phase of the October 2015 presidential campaign, all major political prisoners were released.

Although a strategy of registering as few political parties as possible (in practice none since 2000) was still in place, the Belarusian authorities have been gradually increasing the registration of public associations and funds (see Table 1 and Table 2).

Table 1. Dynamics of the Number Public Associations Growth in Belarus

	Number of newly registered public associations (based on results of the preceding year)	Total amount of registered public associations in Belarus as of the specified date
October 12, 2003	94	2,248
January 1, 2004	155	2,214
January 1, 2005	61	2,259
January 1, 2006	85	2,247
January 1, 2007	100	2,248
January 1, 2008	94	2,255
January 1, 2009	-	2,221
January 1, 2010	94	2,225
January 1, 2011	134	2,325
January 1, 2012	118	2,402
January 1, 2013	111	2,477
January 1, 2014	70	2,521
January 1, 2015	86	2,596
January 1, 2016	106	2,665
January 1, 2017	116	2,731

Source: Legal Transformation Center / Assembly of Pro-Democratic NGOs. *Freedom of Association and Legal Conditions for Non-Commercial Organizations in Belarus*. Available at: <http://belngo.info/2017.freedom-of-association-2016.html>. Accessed on 15.05.2017.

Table 2. Dynamics of the Foundations Growth in Belarus

	Number of newly registered foundations (based on results of the preceding year)	Total amount of registered foundations in Belarus as of the specified date
January 1, 2008	9	64
January 1, 2009	9	75
January 1, 2010	8	84
January 1, 2011	14	99
January 1, 2012	21	119
January 1, 2013	22	139
January 1, 2014	11	145
January 1, 2015	11	155
January 1, 2016	11	164
January 1, 2017	16	172

Source: Legal Transformation Center / Assembly of Pro-Democratic NGOs. *Freedom of Association and Legal Conditions for Non-Commercial Organizations in Belarus*. Available at: <http://belngo.info/2017.freedom-of-association-2016.html>. Accessed on 15.05.2017

Although organizations with a clear political agenda face particular obstacles, two significant political movements have been registered since 2000 – the Movement for Freedom (in 2008) and the Tell the Truth civil campaign (in 2017).

At present, the Belarusian Civil Code defines the legal forms of non-governmental organizations which are based on either membership or property criteria as follows:

- Associations of legal persons (associations and unions) are non-governmental organizations founded by a treaty between a commercial organization and (or) individual entrepreneurs in order to represent and protect common property interests or associations of NGOs and coordinate common business activities;
- Consumer cooperatives – voluntary associations of citizens or citizens and legal persons on a membership basis with the purpose of pooling its members' property shares in order to meet material (property) and other needs;

- Funds are non-governmental organizations founded by citizen(s) and (or) legal persons without membership requirements on the basis of voluntary property contributions and pursuing charitable, social, educational goals, aiming at the development of physical culture and sports, science or other socially useful issues, the promotion of which are specified in the charter of the fund;
- Institutions (establishments) are organisations founded by a proprietor to carry out managerial, social, cultural or other non-commercial operations, partially or fully funded by the proprietor;
- Social and religious organizations (associations) are voluntary associations of citizens based on their common interests to meet spiritual and other non-material needs in compliance with the legislation;
- Republican state-public associations are organizations created on a membership basis and aiming at pursuing goals of national importance.

Notably, a large number of public associations in contemporary Belarus can be called GONGOs (government-organized non-governmental organisations) due to their impressive state financial support and frequent collaboration with the state on political matters (such as election campaigns) and their involvement in the ideological struggle with the Belarusian opposition. GONGOs also take part in organizing and participating in state celebrations of national holidays and many other activities. This is how the Belarusian authorities preserved the Soviet tradition of engaging public associations for ideological and political purposes.

Many of them openly consider themselves successors of the old associations from communist times, like BRSM (the

Belarusian Republican Youth Union) which claims to continue the traditions of Komsomol (the Soviet youth organization which was obligatory for those who planned a future career in the Communist party, public services or state enterprises). They even organize admission ceremonies for “pioneers”, although instead of the red ties used during Soviet times, they now use ones containing elements of the Belarusian official flag.

Others were founded in the 2000s on the initiative of the Belarusian authorities and often substitute NGOs where their role might become a vital counterbalance to independent organizations. A good example of such organizations might be “Belyaya Rus” founded in 2007 and since then playing a major part in election campaigns in Belarus. Members of this public association not only collect signatures for the incumbent for election and participate in pre-election agitation, they also eagerly become members of district and precinct election commissions and election observers. A similar role is undertaken by other public associations such as the Women’s Union and even the Belarusian Red Cross Association.

The Belarusian Legal Transformation Centre, together with the Assembly of Pro-Democratic NGOs, publish reports covering statistics, legal issues and overall trends in the development of non-commercial organizations in Belarus on an annual basis. Recently, they shared their latest report¹ which offers a closer look at the quantitative and qualitative data regarding changes within the Belarusian civil society sector. Thus, as of 1 January 2017, the

Belarusian Ministry of Justice claimed there were 2,731 public associations registered in Belarus. This number included 221 international, 730 republican and 1,780 local public associations, 36 unions (associations) of public associations, 172 foundations (16 international, six national and 150 local ones), seven state and community associations .

The Legal Transformation Centre lists the following new non-governmental organizations registered in Belarus in 2016: two republican trade unions (established following a reorganisation in the form of merger), 116 public associations (two international, 17 republican and 97 local ones), four unions (associations) of public associations and 16 foundations (including one international and one national one).

The Legal Transformation Centre also calculates how the third sector has changed since 2015. For instance, the total number of registered public associations increased by 2.5% (from 2,665 as of 1 January 2016 to 2,731 as of 1 January 2017). The number of registered foundations increased by 4.9% (from 164 as of 1 January 2016 to 172 as of 1 January 2017).

Another observation made in the report suggests that the Belarusian third sector remains a loyal successor of the Soviet one – sports and physical culture associations were quite popular, with 745 such public associations active in the country. Regarding other areas of activity, there are 389 charitable public associations, 320 public associations of youth (including 26 children’s associations), 232 educational, cultural and leisure-time ones, 113 public associations of citizens representing national minorities, 93 public associations of war and labour veterans and invalids, 85 scientific and technical ones, 80 public associations for the preservation of nature, historic monuments and culture, 53

¹ Legal Transformation Center / Assembly of Pro-Democratic NGOs. *Freedom of Association and Legal Conditions for Non-Commercial Organizations in Belarus*. Available at: <http://belngo.info/2017.freedom-of-association-2016.html>. Accessed on 15.05.2017

creative ones, and 32 public associations of women and others currently operating in Belarus.

In their report, the Legal Transformation Centre and the Assembly of Pro-Democratic NGOs also note an alarming trend: the growth of the charitable public association sector in Belarus has nearly come to a halt. Thus, while there were more than 400 charitable public associations in 2012, “in the next few years only a few were registered, some of them were liquidated for various reasons and, in general, their total number”² is steadily decreasing.

On a positive note, however, the total number of public associations has been constantly growing since the late 2000s (see Table 1 and Table 2) despite legal restraints and unfavourable political conditions. At the same time, the authors of the report emphasize that organizations loyal to the state easily obtain registration and arbitrary refusals and censorship still take place. Moreover, the authorities have recently activated the registration of non-commercial organizations indirectly affiliated with the state (GONGOs), which could serve two important goals for them: their ability to participate in western donors’ programs and substituting them in internal political processes – for example, during elections, when the participation of non-governmental organizations in the process is required by law.

Although after the last presidential elections, the Belarusian leader and his apparatus opted not to openly oppress civil society in Belarus in light of improving relations with the West, Presidential

Decree No 3 of 2 April 2015 “On Preventing Freeloading Practices” combined with the deteriorating economic situation in the country brought many Belarusians into the streets to protest during winter-spring of 2017. The result of the protests was a new wave of arrests, fines and the brutal detentions of representatives of Belarusian NGOs, journalists and politicians.

The Decree – popularly called the decree “Against Social Parasites” – imposed a tax on unemployed Belarusians and in practice obliged them to be employed at least 183 days a year under the threat of fine and arrest. The Decree was deemed contradictory to the Belarusian Constitution by legal experts, as Article 41 of the Belarusian constitution stipulates that “forced labour should be prohibited, other than work or service specified in the verdict of a court of law or in accordance with the law on the state of emergency or martial law.” Even though the “official” unemployment rate in Belarus is only 1%, by the end of 2016, it was estimated that approximately 440,000 Belarusian citizens are subject to the “unemployment tax.”³

Subsequently, starting from the beginning of 2017, Belarusians started to receive so-called “happiness letters” – letters from the district tax offices demanding them to pay the tax due to the fact that in 2015 they had worked fewer than 183 calendar days. Among those who received such notifications were single parents with young children, the disabled and their care-takers, those who are not tax residents in Belarus and those whose positions had been recently cut in state enterprises due to the

² Legal Transformation Center / Assembly of Pro-Democratic NGOs. *Freedom of Association and Legal Conditions for Non-Commercial Organizations in Belarus*, p. 7. Available at: <http://belngo.info/2017.freedom-of-association-2016.html>. Accessed on 15.05.2017.

³ Налоговые органы выявили в Беларуси более 440 тысяч «тунеядцев». *Telegraf.by*. Available at: <https://telegraf.by/2017/01/54/340365-nalogovie-organi-viyavili-v-belarusi-bolee-440-tisyach-tuneyadcev> Accessed on 15.07.2017.

shrinking economy – a fact totally ignored by the official media and the state.

As a result of such an inconsistent policy, Belarusian cities and towns witnessed unprecedented numbers of protestors against the Decree and the economic and social policy of the state. The first protest took place in Minsk, where around 2,500 participants gathered. This was followed by anti-Decree demonstrations in Brest, Babrujsk, Baranavičy, Homiel, Hrodna, Mahilioŭ, Maladziečna, Orša, Pinsk, Rahačoŭ and Viciebsk on 19 and 26 February 2017 and on 5, 10-12, and 15 March 2017.

Belarusian oppositional leaders joined these protests rather than organized them this time. In the majority of cases, the protests were organized by local independent trade unions, civil activists and bloggers using social media. For the first time in years, the Belarusian authorities realized that those whom they had been calling a “fifth column” for years turned out to be factory workers, pensioners and single parents at the beginning of 2017. The regular electorate for whom the Belarusian economic system had been maintaining a comparatively decent living standard now went out to the streets because the system had failed.

Subsequently, Decree No 3 was withdrawn for review by the Belarusian legislation bodies. Many people also were granted a deferral of the “social parasite” tax until further notice.

It goes without saying that after tolerating these numerous protests, the Belarusian regime reacted in their usual way. Detentions, fines and imprisonment followed the protests. Overall, approximately 900 people were detained, 239 of whom were arrested and 155 fined. Around 700 were detained just before and on the day of the annual demonstration on the anniversary of the declaration of the

Belarusian People’s Republic, which is celebrated by the Belarusian opposition on 25 March as Freedom Day.

The social protests coincided with a protest initiated by the Young Front movement (registered in the Czech Republic for political reasons) against the construction of an office building near Kurapaty – a place of mass executions of the Belarusian population in the 1930s-1940s by the Soviet secret police. Protesters set up a tent camp on 20 February 2017 and thus prevented construction work for two weeks. Many Belarusians, including famous historians and musicians, came to support the young protesters.

As a result, construction was suspended and a discussion on how to preserve the area around Kurapaty was organized by the state in the official media. Belarusian Nobel Prize winner Sviatlana Aleksievich was offered to head the commission on memorialization of the site, although she declined the invitation. Kurapaty remains a problem for Belarusian state ideology as it is a monument to the victims of a Soviet regime which is glorified in the official propaganda.

Although none of the participants of the protest near Kurapaty were initially detained, despite the attempts of the state police, many of them were arrested and sentenced to fines and imprisonments later. Also, in many cases, civil society activists were preventively detained on their way to protests against Decree No 3 in various cities or on Freedom Day in Minsk. Many of them were charged and sentenced for the Kurapaty protest without their actual presence at trials, as they still were in jail serving previous sentences.

Simultaneously, Belarusian authorities initiated another criminal case in order to justify numerous protests around the country at the end of March 2017. The so-

called “patriots’ case” involved accusations of people who had been active in the “White Legion” organisation (which held sports and para-military training camps in the 1990s and had ceased activities in the 2000s) and several activists from the Young Front. Some of them were released by the beginning of May 2017, while others were charged with the organisation of mass riots, an article which had been used before against Lukashenka’s political opponents. The remaining suspects were released from custody before 1 July 2017 with a ban on leaving the country before the results of the trial are announced.

The Belarusian authorities also violated the rights of journalists who were covering the winter and spring protests 123 times: according to the Report of the Eastern Partnership Civil Society Forum on the civil society, media and human rights situation in Belarus for April 2017⁴, there were 94 detentions, six instances of physical violence, three instances of damaged equipment and 40 cases initiated by the prosecution.

Civil society reacted quite quickly to the brutal anti-third sector campaign in Belarus and organized the civic campaign “BY_help” on social media to gather money to support the families of those who were imprisoned and fined during the March-May 2017 protests. This initiative was possible thanks to three friends, their friendship networks and a growing number of online supporters of the initiative. By mid-May 2017, the campaign managed to raise more than \$55,000 USD worldwide to cover the legal and imprisonment expenses

⁴ *Systemic Democratisation, Human Rights Progress Should Be at the Top of EU-Belarus Partnership Agenda, Say Civil Society Monitors.* Available at: <http://eap-csf.eu/index.php/2017/04/26/monitoring-mission-report-on-belarus/> Accessed on 10.05.2017.

of detainees and support their families and dependents.

Imposing heavy fines against civil society and political activists and journalists has been the dominant measure of punishment in the Belarusian judicial system since 2015. After gaining certain preferences for its lack of major political prisoners, the Belarusian state has become reluctant to imprison people for their political and civil activities. Combined with the possibility in this way to obtain some funds for the deteriorating Belarusian economy, this type of sentence has proved to be ideal, as it doesn’t unnecessarily create political prisoners, while keeping the mechanisms of suppression in place. Belarusian society, though, surprised many when it demonstrated that Belarusians were able to organize themselves without any institutional support to assist those who needed help.

Conclusions

Belarusian civil society and NGOs continue to operate and function under restrained legal conditions and despite the many obstacles generated by the state. The Belarusian authorities have learned several lessons in the past, and now, when relations with the Western world are crucial, they are trying to impose half-measures and achieve a balance between making certain concessions and holding trials against the most active protestors. Most likely, this policy will continue so long as the Belarusian regime is interested in preserving its positive image and acquiring western financial support in the light of deteriorating relations with its long-time partner – Russia.

Belarusian civil society, in turn, tends to demonstrate its ability for self-organisation with the help of modern technologies which is inevitably becoming a worldwide trend. A

whole range of new initiatives are taking place throughout Belarus despite the unfavourable conditions in recent years, although they mainly deal with non-political issues and do not interfere with areas monopolised by the state. NGOs and civil society initiatives that want to act in the fields of local self-governance, human rights or create independent trade unions face legal obstacles, criminal or administrative persecution and repressions against their family members. Overall, the attitude of the state towards them will traditionally remain dependent on the political will of its leaders and their relationship with the Western countries.

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