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The Rule of Law and Business: Is Responsible Business Conduct Possible in Non-Democratic Political Regimes?

Podcast with **Ekaterina Deikalo**

Business and human rights in authoritarian regimes

Olena Uvarova: Hello. Today, we're going to continue our discussion about the rule of law and the business. And I'm happy to introduce my friend Ekaterina Deikalo, international lawyer, business and human rights expert at the Belarusian Helsinki Committee and perhaps one of the first people in the region to start dealing with the subject at the academic level, to collaborate with international academic institutions. So, naturally, I think it's very important to hear Ekaterina's opinion on the subject we're bringing up today. By the way, this aspect doesn't get discussed too often in the particular context of the rule of law, I mean, we usually talk about human rights and the business. But I'd like to discuss this linkage between the rule of law and the business specifically for our region. Oh, and can I call you Katya, since we go back a long way? So, Katya, you've got your article published recently in a Business and Human Rights Journal. Could you please explain what it's about and what's made you write such an article?

Ekaterina Deikalo: Thanks a lot, Olena, for having invited me to this podcast and hello to all the people listening to it. This article of mine is exactly about the sides of this dimension extending across the rule of law and businesses and human rights. It's titled "Business and Human Rights Agenda and Authoritarian Regimes: The Case of Political and Human Rights Crisis in Belarus Since 2020."¹ So, why did I want to write about this, actually? Of course, it was way before all those events (*note* – mass peaceful protests, their violent crackdown and repressions following presidential elections in 2020 in Belarus) that I had got engaged in the subject of human rights and the business — on my own, then, in a more practice-oriented way, together with the Belarusian Helsinki Committee. But when all those things started happening, we naturally looked for this dimension in them too. I mean, we just had to know if those events had their own, not to say specifics, but basically, how the business and human rights topic is reflected in this context. Because, there was a lot of violations at state-owned companies on the one side. Private businesses, on the other side, had turned towards the people, already starting from the COVID times quite a lot, I'd say, while the government had totally failed to meet any of its commitments. That's why we wrote that big Policy Paper back in 2021. We collected information from both public sources and

¹ Ekaterina Deikalo. BHR Agenda and Authoritarian Regimes: The Case of Political and Human Rights Crisis in Belarus Since 2020, <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/bhr-agenda-and-authoritarian-regimes-the-case-of-political-and-human-rights-crisis-in-belarus-since-2020/6E431CDC47A67C94DEBDE740B71433E6>.



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the sources that just reported specific violations related to those events in the business and human rights context, while monitoring the state duty to protect under the first pillar of the UNGP Framework. That is, how the government and businesses behave relative to its commitments and how people respond to that, how large international companies operating in Belarus respond. So, it was a sort of our analytical paper, and then there was a call for this special issue covering our region from the Business and Human Rights Journal, and I wanted to reflect those events of ours through the lens of business and human rights, because those events were extremely significant and important. Of course, the number one issue today is the war in Ukraine, which is only natural. But the thing is that it's not an unrelated matter, because the fact of Belarus' complicity in this aggression is a logical extension of the existing regime in the country. Certainly, the war in Ukraine has added some new dimensions to this issue. That's why this article has appeared based on the prior analytical paper and takes into account the impact of the war in Ukraine, that is, how the regime's support of this war affects domestic situation, businesses and such. So, yes, it's basically about the Belarusian developments as a case for study, but I actually wanted it to become my contribution to greater coverage of the business and human rights issue in the context of authoritarian regimes.

The road to democracy is part of good business

Olena Uvarova: Speaking about the business and human rights in the context of authoritarian regimes, or rather, there are different regimes across the region, some outright authoritarian, some transitional, others are what we call new democracies. Each time we discuss human rights in the region with businesses, it feels like they see us expecting too much from them in the situation where such regimes exist. Their point is mostly like "lets deal with the government first," because businesses are forced to operate in this environment, sometimes supporting it, sometimes trying to be neutral, while we're basically asking them not to be neutral. Is it really that much of a contradiction as businesses think it to be? Like "we have this environment, we have this government, and you're a bit too hasty asking us not to be neutral."

Ekaterina Deikalo: Yes, that's an issue indeed, and our businesses in Belarus are really sensitive about all this talk as well. On the one hand, it's understandable, because that's what authoritarian regimes are all about — I mean, as you just said, there are different regimes that require a clear distinction. So, the deeply authoritarian ones, like the one in Belarus, they have their unique characteristics, at least due to the authorities using businesses as tools to achieve political ends, as instruments of pressure on the people, making the business as much a victim as anyone else. It has escalated since 2020, so now not just any opposition to the government, but any declarations of loyalty towards human rights or any sort of humane behaviour whatsoever cause quite serious risks. When all the public business is totally dependent on the government, when starting from 2020 even private companies are forced to open units of the pro-government trade union, although up till 2020 they had been left alone and only state-owned companies were supposed to have such units. Now they've made the private ones have them too. And when a lot of companies that acted in line with human rights due diligence on the peak of the 2020 protest rallies, such as one of our telecom operators, when the Security Committee (*note* - KGB) ordered them all to shut down the Internet and they just couldn't defy, because it would mean not just death to their businesses, but a real danger to their own safety and health, still, they all responded differently. There was one company that responded in the best, the most human rights-compliant manner. They honestly explained why they shut down the access, gave people a refund without making up any excuses, and just honestly said: "we were ordered by the authorities." And this company suffered the most afterwards. Like, one of their managers in charge of sustainability and PR is now in jail. They've been tracking everyone who was "a bit too smart" back then. And now the government is steadily chasing down everyone they need to chase down. That's why mere existence is already a real challenge in such an environment. Plus don't forget the judiciary isn't independent either, you can't litigate anything at all. It's not the U.S., where you can just tell the FBI to buzz off, and then stir that up, go to court

and say that the government here is spying on everyone, so let's calm them down right now in case they forgot their place. No, that isn't even an option here.

On the other hand, there are different kinds of businesses. Yes, some businesses are only happy to operate under authoritarian regimes, because they aren't, so to say, quite diligent regardless of the environment. It's even better for them in an authoritarian environment, where no one pesters them with any principles or forces any stupid and redundant, in their view, standards of conduct. Like Russian businesses, Chinese businesses, the Emirates, all these "human rights fan club members" as I call them, feel like a fish in water in such systems. But there are diligent businesses too that really share these values and willingly struggle to promote them.

So, getting back to your question, as you phrased it that addressing the issue with the regime itself problem comes before everything else. I don't think it's right, because no matter what kind of environment the business operates in, it should always try to do its best in terms of human rights as well. Because you know, when they say "let's deal the big problem first, like economic crisis, turbulence and whatever, we're just trying to survive here, and you keep getting in the way with your human rights." Leave it for after the COVID, for instance. But it doesn't work that way. No business would "survive" and then just start respecting human rights in a snap, and no business would succeed in dealing with the government, fixing up democracy and then it would become a good business in a snap of fingers. The thing is the path to democracy is a part of being a good business. I mean, the more especially large influential international businesses which are operating under authoritarian regimes for whatever reason, use their influence and other available instruments in this sense, the more it is also a tool to transform the society. This is very important to understand.

To that end, last winter, if I'm not mistaken, the Norwegian Helsinki Committee published a big report titled "Doing Business in Authoritarian States: Tackling Dilemmas While Preserving Integrity", exactly about talking dilemmas. It describes three cases of Norwegian companies in three countries, Brazil, Myanmar, and Belarus. Specifically, Yara International ASA, a Norwegian chemical company that used to work with our state-owned Belaruskali. Each of these cases raises different dilemmas, including whether to leave or to stay. Is it right to ask a business operating under such a regime to leave? Or, as they say and I strongly agree with that, it is important for all of us engaged in this matter, like human rights activists, other stakeholders, international organizations promoting these standards and so on, to understand that it's exactly the good businesses that end up under attack in authoritarian environments. It's important to support them and see what they're trying to do there before starting to ask them to leave, because sometimes a company having its own corporate values and principles it struggles to declare and uphold might be the last hope for its employees, for instance, in a country with such a regime. At least there will be a place where their rights are protected, unlike the factory next door with no international partner to intervene, to put some pressure on the management, or at least to create some media buzz, demanding to state some opinions or to lay down some proper terms.

Speaking of Yara, they went through the entire response algorithm with Belaruskali to ensure compliance with one of their principles. They had several rounds of negotiations with Belaruskali management. Of course, since their counterpart was a totally government-dependent company, they never succeeded and eventually left the market, but at least they did all they could. Who knows, maybe they stopped pressuring those employees so much at least while all that buzz was going on. Anyway, we should be aware that for some people it might be the last hope that their rights can be respected to some extent. Besides, the government might see those foreign companies as important strategic partners and might turn a blind eye to some of their demands and whatnot just to keep them from leaving, but the things would only get better for people.

Well, it still depends on the level of the current crisis, with the outbreak of war we've come to the point when the government doesn't care about anything anymore, but it's just one of numerous possible situations. That's why we need to look closely at what diligent businesses are trying to do there and how much difference it makes for the people. Plus we need to realize that, in certain

cases, another company from the “human rights fan club” will take place of this particular company that has left the market, because nature abhors a vacuum and the economic ties need to be somehow rearranged anyway. We can see that now in Belarus as an effect of the sanctions — and it’s a huge dilemma as well, because Russian companies have replaced a lot of foreign companies that have left the market, and of course, they aren’t doing us any good in terms of corporate culture, only making things worse.

But then again, I’m not saying we don’t need sanctions. Norwegians have made a good point in their report that good companies under authoritarian regimes always find themselves in situations where no good solution is possible. Authoritarian regimes tend to create an atmosphere where no good decisions, no good choices can be made. It’s also an important point that there’s no other way than choose the lesser of two evils. Still though, as they write in their analytics, some may ask like “Why do you even enter those authoritarian markets? What the hell were you even doing there in Myanmar?” And that’s a legit question. But then again, the major point I can’t help but agree with is that sometimes it’s these big international companies having weight and values and stuff that can become efforts for good in such environments. Because the business is a stakeholder too, just like the society. I mean, bringing some sort of culture to this state and at least starting rebuilding it, brick by brick, into something civilized after the current regime falls is a job not just for activists, civil society or the new government. I think that businesses play an important role here, especially large international businesses that come with their own rules and say “we’re gonna work here if you have this and that in place”. But of course it can happen only after the regime falls and a new government comes. Just in order for this new government not to turn into the old one, there should be someone to tell them in a due time that “here are our rules and we’re going to stick to them.” However, there are situations when international companies feel great under authoritarian regimes and stick all those values laid down in their own policies deep into their back pockets.

To go or stay

Olena Uvarova: Honestly, what you just said resonates a lot, because people in our region are keenly aware that international companies really can be and often are trailblazers in introducing these values and they can play a really significant role by doing so. That’s why when it comes to discussing Ukraine and Russia’s aggression, when a lot of international experts wonder how come any companies at all have stayed in Russia since 2014. Despite having a clear standpoint in this matter, it seems to me that the answer to this question is far less straightforward, exactly because such companies, as I see them, are able to influence public opinion, to raise relevant issues, to shape attitudes plus, like you say, they can be really such islets where people can breathe freely. That’s why those are really complicated issues being discussed about foreign companies leaving Russian market and I wonder if anyone is going to study how much the taxes paid by such a company to Russian budget correlate with its capacity to actually promote certain values somehow. And how it can be measured. Apparently, questions to companies should not be limited to whether they’ve left or not, but rather about what they’re doing and what they’re getting involved in.

Ekaterina Deikalo: It’s a very important question. I’d say, fundamentally, it’s not about just staying or leaving, but about what you are doing there while staying, the reasons for staying. Obviously, the basic purpose of doing business is to make money, it’s a natural reason. But the point is that, as I said, there are some companies that feel great in authoritarian environments and have stayed exactly because money doesn’t stink, but there are also other companies that are diligently trying to do something, to promote those values. Another thing is that they may not always succeed in this, but sometimes it’s still better than nothing. It’s a real dilemma that can’t be evaluated just by the fact of them staying or leaving. It should take into account what they had been doing or at least trying to do before they left. Because, you know, some companies have left not at all because they care about human rights. So, it doesn’t mean that everyone who stayed are bad and everyone who left are good. Some of them have left only because they were losing profit and they

didn't want it, and all those human rights, all those people getting murdered, tortured and the fact that the country have started an aggressive war, none of this matters to them. That's why we can't just judge in black and white like "you're bad if you stay and you're good if you leave." What a company has done before leaving is more important. When a company has left without saying a word about any values, while another company might've stayed for another year before leaving, and got criticized for it, but it spent this year trying to declare those values, trying to get their point across to the management, to the government. I guess the second one benefited the society more.

Olena Uvarova: Makes sense. By the way, speaking about sanctions, I'd like to make an announcement first. Actually, we're going to do a series of webinars in autumn, after this series of podcasts is over. And sanctions in the context of the rule of law and corporations, sanctions against corporations specifically, will be among the topics, because a lot of questions are asked about this. So I'd like to invite you in advance as a speaker for such a webinar.

Ekaterina Deikalo: Thank you. Actually, when it comes to sanctions, the Norwegian Helsinki Committee made an interesting suggestion in their analytical paper about how we should distinguish companies that stay under an authoritarian regime even for some time, but they're trying to do something good there, declaring their values. What instruments can be used against those companies that stay and do nothing of what needs to be done, but rather coexist with the regime quite perfectly. What they suggest is an idea of targeted sanctions. The idea itself is nothing new, but they suggest that democratic countries need to support those companies staying in authoritarian environments that struggle to change something with their declarations, work with their partners' management, bringing on the leverage and so on. In parallel, targeted sanctions should be imposed against specific business persons, responsible for human rights violations. Because, essentially, a company's policy for operating under an authoritarian regime is always driven by its leadership's attitude. The point is that if a company has everything written down in its policies, including such wonderful things as values, principles and so on, but suddenly withdraws from declaring them and acts nothing like it's supposed to according to its own principles laid down in corporate policies, then it's clearly supposed to be someone's decision, right?

Olena Uvarova: Sure.

Ekaterina Deikalo: That's why they suggest this idea not to throw all the companies that stay there under the steamroller of hatred.

One more important issue. Think of the Xinjiang case. We recall when Zara, H&M, and some other global apparel retailers spoke out of the situation with Uighurs and then some of them left the Chinese market, they acted in an honest way. And after a while, Chinese TV started blurring their logos in all the shows, news, movies, everywhere. Of course, I wouldn't say that it has caused such a huge loss, but I can give a similar example from Belarus. When Nivea Men and then Skoda in 2021 both refused to sponsor the hockey championship that was supposed to be hosted in Minsk, the Belarusian government imposed a ban on imports of their products with the wording "for unfriendly actions towards Belarusian people." We're being consulted with by another large company — I can't tell you the name — and they cite this case as an example, because they've been asked (by NGOs and activists) to remove their commercials from Belarusian TV all the time. So they're worried, firstly, about such consequences, secondly - that their employees may suffer if they decide to leave. I mean, they really didn't know what to expect. As they say, "if we leave, they're going to smash our shops or fire our workers or do something else?."

It's important to realize that concerns like "we'll do the right thing now and then they'll come to arrest our employees" come from the massive unpredictability, specific to authoritarian regimes, where neither the business, nor any other powers but the government itself is the primary source of trouble. International businesses don't understand the context at all. It's hard to understand for those who don't live here. I mean, some things may seem less scary to them than they really are or, conversely, they tend to believe that all their employees might get arrested just because the

company refused to work in the country, but that's also not true. That's exactly why it's so important to promote this topic in the context of authoritarian regimes. I don't know, publish some kind of a guidebook maybe, or at least discuss these specifics.

Olena Uvarova: I fully agree. Thank you very much. Really, we heard a lot of interesting and important thoughts today and I do hope these podcasts will be continued in our future webinars and other events, maybe. So, thanks again and until next time.

Ekaterina Deikalo: Thanks a lot for the invitation. I hope this podcast would be useful to someone.