

CRIMINAL PROSECUTION OF VIKTAR BABARYKA IN THE REPUBLIC OF BELARUS

Statement of Facts

Personal Information

Viktar Babaryka (born 1963, Minsk) is a Belarusian banker, philanthropist, and public figure. Widower, has a son Edward and daughter Mary.

Mr. Babaryka has headed Belgazprombank JSC and managed it since 2000 until May 2020. During this time Belgazprombank had entered the top five of the largest banks of Belarus.

In 2008, V. Babaryka established the Chance Foundation to help sick children. He financed the Belarusian Nobel laureate Svetlana Alexievich's books publication. With the assistance of V. Babaryka, the original Bible of Francis Skorina was returned to Belarus, as well as paintings by famous artists from Belarus - Mark Chagall, Chaim Sutin, Leu Bakst.

On May 12, 2020, Mr. Babaryka had publicly announced his presidential ambitions. Nowadays he is considered as the main competitor of President A. Lukashenko in the upcoming presidential elections on August 9, 2020. According to all polls conducted, the rating of V. Babaryka significantly exceeds the rating of President A. Lukashenko.

On June 18, 2020 Viktar Babaryka was arrested by the Belarusian authorities and still remains in custody. и до настоящего времени находится под стражей.

Arrest

On June 18, 2020 Viktar Babaryka who is nominated as a candidate for President of the Republic of Belarus, together with his son Eduard Babaryka who is leading the campaign, were detained by the Department of Financial Investigations of the State Control Committee of the Republic of Belarus.

The arrest was preceded by public statements by President A. Lukashenko regarding the allegedly unlawful activities of V. Babaryka during the period when he headed the Belgazprombank OJSC, and the President's order to the Attorney General's Office and the State Control Committee "to get pot-bellied bourgeois", followed by the Babaryka's closest friends and Belgazprombank OJSC employees' detainment.

The arrest took place the day before the end of the stage of the election campaign for collecting signatures of voters for nominating candidates for the presidency and the beginning of the period for submitting applications for registration as a candidate for president to the Central Election Commission of the Republic of Belarus. At the time of the arrest, the initiative group of V. Babaryka had collected more than 400,000 signatures of voters.

V. Babaryka was arrested suddenly, on his way to the election commission in order to hand over the signature sheets. He was not allowed to appear in front of the Department of Financial Investigations of the State Control Committee of the Republic of Belarus himself or to notify his attorneys and/or his family about the arrest. During the day, lawyers could not meet with him and participate in legal proceedings, despite the fact that half an hour after the arrest they had made an

attempt to enter the Department of Financial Investigations' building where V. Babaryka was kept in custody and that the latter had announced names of specific lawyers and presented contracts with them. Thus, V. Babaryka was deprived of the opportunity to communicate with lawyers for more than 24 hours after his arrest.

The prevention of V. Babaryka's lawyers from entering the building of the Department of Financial Investigations has also prevented them with filing a complaint regarding the arrest of V. Babaryka, which is supposed to be filed with the court through the criminal prosecution body, i.e. the Department of Financial Investigations. The defense's petition of June 19, 2020 to the KGB investigator for the release of V. Babaryka, was rejected.

On June 19, 2020, a coalition of Belarusian human rights organizations recognized Viktor and Eduard Babaryka as political prisoners, stating:

The presidential election is taking place in conditions of intimidation, threats and pressure. The current head of state has repeatedly publicly threatened his political opponents, including Viktor Babaryka. Given these circumstances, we conclude that the real grounds for the criminal prosecution of Viktor Babaryka and members of his nomination group are political motives aimed at stopping his presidential nomination activities and forcing his eventual withdrawal from the election. [1]

The Detention

On June 20, 2020, V. Babaryka was detained by decision of the investigative body, the State Security Committee (KGB) of the Republic of Belarus. From the moment he was detained to the present time, he has not been brought before a judge or other official authorized by law to exercise judicial power.

The use of other non-insulating measures to ensure the objectives of the preliminary investigation were not considered despite the fact that before and since his arrest V. Babaryka announced his readiness to arrive at the indicated place and time upon request of the official investigative body [2] .

Appeals filed by the defense in court against the detention were examined without V. Babaryka's participation and were rejected.

Presumption of Innocence

Both before and during the investigation of the criminal case, the President of Belarus, other senior officials and the state media have been making public statements, numerous publications and reports that were not limited to information about the official charges put forward but also contained allegations of V. Babaryka 's guilt of tax evasion, legalization of criminal profits and the creation of a criminal organization, as well as numerous statements about the existence of so-called evidence of these facts.

For example, on June 4, 2020, President A. Lukashenko publicly stated that V. Babaryka earned his money " *fraudulently* "[3] . At the time of the statement by President A. Lukashenko, there were no official charges put forward by the law enforcement agencies against V. Babaryka.

Chairman of the State Control Committee of the Republic of Belarus Ivan Tertel at a briefing on June 18, 2020, the day of detention, has informed the reporters that V. Babaryka was detained because he has been the direct organizer and the leader of illegal activities [4].

On June 19, 2020, the Attorney General of the Republic of Belarus, Alexander Konyuk commenting the criminal case to BelTA news agency stated: “Crimes were committed systematically, for a long time, using transnational illegal schemes, they created a real threat to the interests of our country’s national security both in financial and other spheres” [5].

Foreign Minister Vladimir Makei, on June 19, 2020, commenting the EU demand to immediately release Presidential Candidate Viktor Babaryka said that *‘there is solid evidence, by the way received from the European countries, including the EU countries, that these persons were engaged in illegal activities’* [6].

On the day of the arrest of V. Babaryka, on June 18, 2020, the state-owned television channel “National Television” has made a report *‘The Belgazprombank Case: about 20 people were detained, including the ex-head of the bank Viktor Babaryka’* in which the actions of Belgazprombank’s management were named as ‘money laundering’ and ‘criminal schemes’ directly associated with V. Babaryka. [7]

It should be noted that until the public announcement of V. Babaryka’s presidential ambitions and the subsequent sharp increase of his ratings as a potential Presidential Candidate, there were no official suspicions or charges put forward against Viktor Babaryka by the law enforcement agencies.

The lawyers of V. Babaryka (as well as all the lawyers working on the so-called Belgazprombank case) have been forced to sign a non-disclosure obligation in relation to all the information of the preliminary investigation, which prevents them, as well as V. Babaryka and other imprisoned people from presenting their arguments.

Right for Defense

After the arrest, V. Babaryka was placed in the pre-trial detention center of the State Security Committee (KGB) of the Republic of Belarus. For several days after the arrest - from June 18 to June 25, 2020 - V. Babaryka was deprived of the possibility of confidential communication with lawyers. Lawyer D. Laevsky on June 22, 23 and 24 attempted to meet with his client in the KGB pre-trial detention center, but he was refused this on the grounds "due to the epidemiological situation (COVID -19)". No response has yet been received to complaints filed by the lawyer with the Attorney General.

Meetings with the client during the investigative actions on June 19 and 20, 2020 did not ensure confidentiality of communication and adequate time to prepare the defense.

In connection with a non-disclosure subscription taken by V. Babaryka’s lawyers under the pressure of the officials it appears impossible to publicly refute the allegations.

Conditions of Detention

Intrusive searches of all prisoners of the KGB jail are the established practice. V. Babaryka was also subjected to such a search.

In the first days after the arrest, V. Babaryka did not have a bed (he slept on the floor). The light is turned on in the cell around the clock.

There is not enough of drinking water in the KGB jail. Although hundreds of people have written letters to Viktor Babaryka, as of the June 25, 2020, he did not receive any.

Attorneys (Lawyers)

Lawyers in the Republic of Belarus often meet difficulties when carrying out their professional activities and experience pressure from the licensing authority, the Ministry of Justice of the Republic of Belarus, especially when they work on politically motivated cases.

Human rights organizations note direct control over the activities of lawyers by the state licensing authority:

At the normative level, the legal profession in Belarus is continuously completed to the supervision of the Ministry of Justice .[8]

In such cases, in particular in the Belgazprombank case, attorneys are made to sign non-disclosure obligations in relation to the preliminary investigation data and the scope of such data is not defined by legislation. In practice, this leads to an arbitrary interpretation of the non-disclosure obligation of lawyers by the investigating authority. In fact, this leads to a situation where lawyers are threatened with criminal liability for reporting any data on the criminal case, including articles of the Criminal Code under which the person is charged, the results of consideration of the complaints filed by the defense, etc.

There are restrictions, difficulties, as well as a direct prohibition "*due to the epidemiological situation*" for lawyers to visit their clients, in particular in the KGB jail.

In response to the official letter from the lawyers about the systemic nature of violation of their rights by state officials and their call directed to the Belarusian Republican Bar Association to protect the rights of lawyers made on June 19, 2020, the head of the Belarusian Republican Bar Association Viktor Chaychits stated:

Opposition to the provision of legal assistance is not allowed by law, it is stated in Article 62 of the Constitution. The president as a guarantor of our Constitution will not allow this. [9].

On June 20, 2020, the Belarusian Republican Bar Association has posted a statement on its website urging lawyers to observe "*subordination*" and expressed a regret that "*some lawyers are warming up the Internet and the media around them*" [10].

[1] <https://elections2020.spring96.org/en/news/97707>

[2] <https://news.tut.by/elections/689933.html>

[3] <https://news.tut.by/elections/687425.html>

[4] <https://www.belta.by/incident/view/v-kgk-obnarodovali-fakty-protivopravnoj-deyatelnosti-babariko-395279-2020/>

[5] <https://www.belta.by/society/view/konjuk-prestupnye-dejaniya-figurantov-dela-belgazprombanka-sozdali-realnuju-ugrozu-interesam-395377-2020/>

[6] <https://www.kommersant.ru/doc/4388485>

- [7] <https://ont.by/news/delo-belgazprombanka-zaderzhany-okolo-20-chelovek-v-tom-chisle-i-eks-rukovoditel-banka-viktor-babariko>[8] http://spring96.org/files/book/en/2018-control-over-lawyers_en.pdf
- [9] <https://news.tut.by/economics/689565.html>
- [10] <http://www.rka.by/news/obrashchenie-k-advokatam-po-voprosu-subordinatsii/>