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Implications of Russia's war in Ukraine for Belarus and its society: what exactly is written in the EU documents?

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Abstract: This article provides an assessment of the relevant EU documents pertinent to the restrictive measures against Lukashenka's regime after the 2020 fraudulent presidential elections in Belarus and since the beginning of 2022 Russia's aggression against Ukraine. The text identifies relevant concepts and provides their contextual analysis vis-à-vis their linkage with Belarus in general, its society and Lukashenka's regime. The article reveals that Belarus did not become a priority of the EU and its pre-war critical engagement policy failed to contribute to the development of a unified EU-wide vocabulary addressing the Belarusian case. With the start of the war, it was internationalised and placed within a binarity "victim of aggression – (co-) aggressor" with little evidence of an unequivocal shift towards a primary focus on the contextual interpretation of the domestic developments in Belarus.

Keywords: Belarus, war in Ukraine, EU sanctions, illegitimate regime, EU eastern neighbourhood

1. Introduction

On 24 February 2022, the political realities in a wider Europe changed dramatically. In different ways, Russia's war against Ukraine has affected other countries. Belarus was one of them. Since the beginning of the war, Belarus's territory was used by Russia's military troops as one of the bases of their operations. In turn, there has been no evidence of the direct involvement of the Belarusian army in this war. At the same time, the involvement of Belarus in this war resulted in a strong condemnation and restrictive measures towards this country from the European Union. Specifically, in its conclusions of 24 February 2022, the European Council "strongly condemn[ed] the involvement of Belarus in this aggression against Ukraine and call[ed] on it to refrain from such action and to abide by its international obligations".¹ Issued on the same day, the Declaration

¹ European Council conclusions on Russia's unprovoked and unjustified military aggression against Ukraine, EUCO 18/22. 24-02-2022 (<https://bit.ly/3RMAtbx>).

by the High Representative on behalf of the European Union on the invasion of Ukraine by armed forces of the Russian Federation contained very similar wording about Belarus.² Subsequently, on 2 March 2022, the EU introduced restrictive measures against several high-level officials of Lukashenka's regime.³ Thus, the EU recognised Belarus as a participant in the Russian military aggression against Ukraine through

allowing Russia to fire ballistic missiles from Belarus into Ukraine, enabling transportation of Russian military personnel and heavy weapons, tanks, and military transporters in Belarus (road and railway transportation) to Ukraine, allowing Russian military aircraft to fly over Belarusian airspace into Ukraine, providing refuelling points in Belarus for Russian military aircraft engaged in activities against Ukraine, and storing Russian weapons and military equipment in Belarus.⁴

Later, on 9 March, 8 April and 3 June 2022,⁵ the EU adopted further restrictive measures affecting Belarus's businesses and financial sector. This trend toward sanctions became even more evident at the level of some EU Member States. For instance, Czechia interpreted the events in Ukraine as "a Russian and Belarusian aggression"⁶ and introduced a very restrictive approach towards issuing visas for Belarusian citizens.⁷

Based on the case of Belarus under Lukashenka's regime during Russia's aggression in Ukraine, this text seeks to answer two interrelated questions. The first one is to what

² Ukraine: Declaration by the High Representative on Behalf of the European Union on the Invasion of Ukraine by Armed Forces of the Russian Federation. Press Release, 24 February 2022 (<https://bit.ly/3RIwwEB>).

³ Council Implementing Regulation (EU) 2022/353 of 2 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (https://eur-lex.europa.eu/eli/reg_impl/2022/353/oj); Council Decision (CFSP) 2022/354 of 2 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (<https://eur-lex.europa.eu/eli/dec/2022/354/oj>).

⁴ Ibid.

⁵ Council Regulation (EU) 2022/398 of 9 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (<http://data.europa.eu/eli/reg/2022/398/oj>); Council Decision (CFSP) 2022/399 of 9 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (<http://data.europa.eu/eli/dec/2022/399/oj>); Council Regulation (EU) 2022/577 of 8 April 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (<https://eur-lex.europa.eu/eli/reg/2022/577/oj>); Council Decision (CFSP) 2022/579 of 8 April 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (<https://eur-lex.europa.eu/eli/dec/2022/579/oj>); Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (<http://data.europa.eu/eli/reg/2022/877/oj>); Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (http://data.europa.eu/eli/reg_impl/2022/876/oj).

⁶ Usnesení vlády České republiky ze dne 30. března 2022 č. 260 k přípravě sankčních opatření vlády České republiky v reakci na ruskou a běloruskou agresi na Ukrajině [Resolution of the Government of the Czech Republic No. 260 of 30 March 2022 on the preparation of sanction measures of the Government of the Czech Republic in response to the Russian and Belarusian aggression in Ukraine] (<https://apps.odok.cz/attachment/-/down/IHOACD98E6W3>).

⁷ Usnesení vlády České republiky ze dne 30. března 2022 č. 254 o přijetí krizového opatření [Resolution of the Government of the Czech Republic No. 254 of 30 March 2022 on the adoption of a crisis measure] (<https://apps.odok.cz/attachment/-/down/IHOACD98DREY>).

extent the deeds of an authoritarian *de facto* ruler with no clear public mandate from the society can be equated to the actions of the polity he claims to represent. The second question is to what extent the society that did not provide the ruler with a clear public mandate to speak on its behalf could be responsible for his deeds. This analysis is not an advocacy piece. It does not address legal or technical aspects of the sanctions against Lukashenka's regime. Nor does it discuss their legality, scope and possible efficiency. Instead, it focuses on the socially significant wording of the relevant documents. The article is composed accordingly. After this short background information about the political configurations in Belarus and relevant conceptual framework, the above questions are answered in the relevant chronologically designed empirical sections.

The text has another substantial limitation as it describes the situation shaped by ongoing events. The above developments have already made a significant impact on the situation of the Belarusians in a cross-border context and produced a considerable self-reflection within the society. Thus, the transboundary societal implications for Belarusians triggered by the stance of Lukashenka's regime in Russia's war against Ukraine add value to this article and thereby contribute to the existing knowledge.

2. The factual background of Belarus's situation

After over 30 years of existence as an independent state, Belarus remains one of Europe's least known countries, particularly in the northern and western parts of the continent (Kotljarchuk, 2020, p. 45; Sierakowski, 2020, p. 6). The trajectories of Belarus's post-Soviet development can be explained by a combination of the country's Soviet legacy and paternalistic political system (Kascian, 2018, p. 87). The former is attributed to the country's image as "a perpetual borderland" (Savchenko, 2009) with its "denationalized nation" (Marples, 1999) that strives to overcome an internal "struggle over [its divided] identity" (Bekus, 2010) and actively participates in the integration projects led by Russia. The latter involves the personality of Aliaksandr Lukashenka, its first and so far, the only president who has ruled the country since 1994. Under his rule, Belarus never had a free and fair election,⁸ and got the reputation of Europe's last dictatorship (Bennett, 2011; Wilson, 2011).

The mass and durable protests following the 2020 fraudulent presidential election are crucial for understanding the current developments within and around Belarus. They posed an unprecedented challenge for Lukashenka's regime. In many ways, the protests could be interpreted as the society's attempt to terminate the existing social contract between Lukashenka and Belarusians (Kascian & Denisenko, 2021). As Korosteleva & Petrova (2021, p. 9) summarise, the 2020 protests were "a mesh made of the totality of all relations" within and around Belarus that expand beyond nation-building issues, democracy deficits, or specifics of the country's post-communist transition. Yet, the post-electoral tactics of Lukashenka's regime resulted in the escalation of human rights

⁸ Urgent need for electoral reform in Belarus. Resolution 2371 (2021). Parliamentary Assembly of the Council of Europe. April 21 (<https://pace.coe.int/en/files/29170/html>).

violations, a crackdown on independent civil society, and the adoption of the new repressive and restrictive legislation.⁹ These legal novelties not only contained clear patterns of the authorities' strategy to mitigate protest sentiments in the society but, in some cases, provided "room for politically motivated and foregone decision-making aimed at banning certain symbols" (Kascian, 2021). This was backed by the drift of the official discourse towards a further hegemonic dominance model with Lukashenka as the regime's central element, both institutional and symbolic (Chulitskaya & Matonytė, 2018; see also Kascian & Denisenko, 2021).

The resistance of the Belarusian society after the 2020 fraudulent election generated considerable support in the neighbouring EU countries. For many eastern Europeans, this solidarity was merely a combination of moral responsibility and common belonging (Bekus, 2021, pp. 4–5). The former echoed the late 1980s when the people in central and eastern Europe fought for their freedom and independence. The latter was based on "a shared legacy of tyranny and common aspirations for democracy and freedom" (Bekus, 2021, p. 4). This sympathy towards the resisting Belarusian society also confirms that there is a common understanding of the need to clearly differentiate between Lukashenka's regime and the Belarusian society. This discrepancy between Lukashenka's regime and the country's civil society is also essential for the understanding of Belarus–EU relations.

Placed within the framework of the Eastern Partnership track of the EU Neighbourhood Policy¹⁰ Belarus–EU relations could be described as limited and formalised critical engagement measured through the prism of domestic human rights and democracy quality (Bosse, 2021, p. 202; Kascian, 2018, p. 88). Yet, the EU's restrictive measures and sanctions against the individuals and business entities affiliated with Lukashenka's regime described above was not a new approach. As Bosse (2021, p. 204) summarises, "[o]ver recent decades, the effects of the EU's restrictive measures on Belarus have been ambiguous" as they did not affect its cooperation with Russia, China and other countries beyond western democracies. Premised on human rights conditionality, all previous EU sanctions emphasised a clear distinction between Belarus's population and members of Lukashenka's regime responsible for the violation of democracy and human rights in the country (Portela, 2008, p. 6).

In turn, support of Belarus's civil society was one of the key elements of the EU policies towards this country considering Belarus's domestic political configurations (Vilpišauskas et al., 2021, p. 71). Crucial for many civil society organisations in Belarus, this support "featured prominently in the [Belarus-focused] EU's discourse" (Bosse, 2021, p. 205). For Belarusian CSOs, the EU-backed initiatives provided essential infrastructural support that contributed to their capacity-building, and guided their development strategies toward the promotion of the EU values and daily practices in Belarus (Mazepus et al., 2021, pp. 51–52). Thus, Belarus's CSO sector could be seen as the main ally of the EU in its endeavours to promote reforms and democracy in Belarus. In this context, its role

⁹ For details see, for instance, monthly public reports on Human Rights Situation in Belarus prepared by the Human Rights Center "Viasna" (<https://spring96.org/en/publications>).

¹⁰ On 28 June 2021, Belarus's MFA announced that the country suspended its participation in the Eastern Partnership initiative. For details see BelTA (2021). Belarus Suspends Participation in Eastern Partnership Initiative. 28 June 2021 (<https://bit.ly/3SLY1ys>).

hardly differed from those played by the CSO sectors in other countries of the EU's eastern neighbourhood (Vilpišauskas et al., 2021, p. 76). The capacities of Belarusian CSOs have always been essentially limited by the political climate in the country. However, their actual and potential role in society explains the persistence of Lukashenka's regime to systematically eradicate independent CSOs after the 2020 presidential election.¹¹

3. Conceptual framework

The use of Belarus's territory by Russian military forces to attack Ukraine triggered debates about the nature of Belarus's involvement in ongoing Russia's aggression. The available evidence confirms that it also provoked cross-border and intragroup emotional reactions towards Belarusians as a group, defined through the joint application of citizenship, ethnicity, language, culture and background criteria. In some cases, these external reactions were limited to contempt or anger, while in other cases they contained clear patterns of hate speech, discrimination, or intentionally harmful conduct. The conceptualisation of the present case of Belarus, its society and its political regime goes beyond the scope of the analysis within purely legal categories and brings three elements to the puzzle.

First, as Luhmann (2004, pp. 142–143) argues, “[t]he function of law deals with expectations that are directed at society and not at individuals” and involves “the possibility of communicating expectations and having them accepted in communication”. Every socially significant legally binding instrument communicates a specific message to society by the available linguistic means. Embodied in a textual form, it forms “a shared system of codified values” in which “the exact wording of the text matters” (Radwanska Williams, 1993, p. 91, 95). This confirms that the exact wording of the documents is particularly important when a definable community becomes a subject of a cross-border discourse on moral responsibility for the deeds of any government or administration that claims to be their representatives (cf. Rääkkä, 1997).

Second, the war triggered a set of emotional black-and-white thinking patterns that urged specific groups and their members to act swiftly and thereby make an ethical choice. As Beu & Buckley (2004) summarise, the activities of the group members are motivated by self-generated and external sources, while the complexity of social factors extends their ethical decision-making beyond the dichotomy of a simple choice between good and evil. As a result, group members “shape the rules of moral judgment and the nature of moral standards”, “provide collective support for adherence to moral standards”, and “aid in the selective activation and disengagement of moral self-regulation” (Beu & Buckley, 2004, p. 555). It presupposes mobilisation of the members of the affected group, *inter alia*, by addressing and eventually challenging the causative effect of the legally relevant restrictive measures. Thus, the situation of a definable community, *i.e.* Belarusians in this particular

¹¹ Human Rights Center “Viasna” (2021). Joint Statement of Belarusian Human Rights Organizations on Violations of Freedom of Association and Pressure on Human Rights Organizations. 07 October 2021 (<https://spring96.org/en/news/105252>).

case, needs a more comprehensive analysis than the assessment of the exact wording of the legal documents. Hence, it requires a nuanced contextual focus on the relevant legal concepts.

Third, the 2020 protests in Belarus were the society's attempt to discontinue the existing social contract with Lukashenka (Kascian & Denisenko, 2021). In turn, the regime's post-electoral official discourse and its activities to liquidate independent CSOs provide additional evidence that Lukashenka's regime has for a long time seen domestic political and societal actors through the prism of Schmitt's friend/enemy groupings (Schmitt, 2007, p. 26). Therefore, the events around the 2020 presidential election in Belarus confirm the insurgent type of the country's civil society as a platform that brings together "social movements and other organisations that resist authoritarian rule and under certain circumstances [could] successfully replace it with democratic rule" (Bernhard, 2020, p. 341). At the same time, it cannot still terminate the existing social contract being subject to the regime's ongoing repressive policies. In turn, the scale and durability of the protests confirm that Lukashenka also lacks a clear public mandate to speak on behalf of the Belarusian society and therefore uses excessive violence to prevent the democratic transition of power. Despite the long-term symbiotic coexistence of Lukashenka's regime and Belarus's society, these two actors should be considered two different elements of the puzzle when it comes to the analysis of the EU and its member states' policies towards Belarus.

Sanctions are primarily policies and actions (Galtung, 1967). Yet, the EU sanction policies towards authoritarian regimes in its neighbourhood demonstrate that they constitute a decision that is a result of the EU normative performance. The finalised content of the relevant documents is based on an argumentative discourse of all involved actors and allows to determine "how the EU defines the *right* or *just* principles guiding its foreign policy" (Bosse, 2017, p. 60, 68). Referring to ethnic context (i.e. definable social groups), Van Dijk (1993) demonstrates that there is a mutual impact between the political and popular discourse and opinion formation with the media as an enabler of this cycle. This mutual impact is merely top-down as the agendas are primarily defined by politicians which result in the influence and legitimation of the relevant "policies and legislation" (Van Dijk, 1993, p. 50). Yet, the fields of actions of political and social discourses comprise "segments of the respective societal 'reality', which contribute to constituting and shaping the 'frame' of discourse" (Wodak, 2001, p. 66). It implies a chronological analysis adjusted "to accelerating social dynamics" (Krzyżanowski, 2010, p. 201). Based on the three above elements of the puzzle, a two-level model was applied for the analysis (Krzyżanowski, 2010, pp. 81–89). The entry level was focused on the analysis of the relevant Belarus-related European Council documents,¹² significant political statements. At this stage, relevant concepts were identified vis-à-vis their linkage with Belarus in general, its society, and Lukashenka's regime. The second stage comprised an in-depth contextual analysis of the specific units within the above concepts with the identification of their implications

¹² Following the 2020 presidential election, the European Parliament adopted five resolutions on the situation in Belarus. Because of their non-binding legal nature, these resolutions serve as supplementary sources in this analysis as they can be regarded merely as "a primary tool for attracting attention and raising public and political awareness of important issues, though not always with a specific legislative goal in mind" (Kreppel & Webb, 2019, p. 388).

based on the interpretation of the wording of the relevant documents. This text omits the analysis of legally-binding acts adopted by the EU Member States in compliance with the EU-level documents making an illustrative exception for the case of Czechia, as its approach towards Belarusian society at large was designated by the Belarusian political opposition as “discriminatory” and “toxic experience”.¹³ Yet, the focus on the individual Member States, their reasoning and interpretation of the events, and apparent advocacy strategies deserve a special article.

The factor of time is another important element of the analysis. It contains two important dates that are essential for the design of the two subsequent empirical sections. The first date is 9 August 2020, the day of the fraudulent presidential election in Belarus. At the foreign policy level, it discontinued the path of improved Belarus–EU relations. At the domestic level, it signified the start of a gradual shift of Lukashenka’s regime towards more repressive policies against society under the pretext of social cohesion and unity. The second one is 24 February 2022, the day when the Russian invasion of Ukraine started. At the foreign policy level, it became a clear marker that Belarus under has been losing its sovereignty because of his regime’s total dependence on Russia in the military, security and foreign policy spheres, inter alia, by the fact that the Lukashenka Administration allowed Russia to use its territory to attack Ukraine. At the domestic level, it coincided with the completion of the regime’s repressive transformation aimed at the reduction of potential risks of being challenged by protest activities formalised by the adoption of a new constitution in a fraudulent referendum on 27 February 2022. The following two empirical sections apply the above model to answer the two research questions. The first of them addresses the period between the 2020 election in Belarus and the start of the war in Ukraine. The second focuses on the period after the war’s outbreak.

4. Between fraudulent election and war: Formalised and non-prioritised approach

Until October 2020, the EU reaction was limited to the statements of the EU’s High Representative for Foreign Affairs confirming that the election was “neither free nor fair”, acknowledging that “the people of Belarus have demonstrated the desire for democratic change”, and calling the “Belarusian political leadership” upon the launching of “a genuine and inclusive dialogue with broader society”, and conditioning bilateral relations upon Belarus’s progress on human rights and the rule of law.¹⁴ Thus, the initial reaction of the EU was based on a standardised critical engagement approach that clearly distinguished Belarus’s society and Lukashenka’s political regime. The delay in the institutionalised reaction was caused by the need to compromise the diverse domestic political interests of the EU Member States on topics unrelated to Belarus (Bosse,

¹³ Anatol Liabiedzka’s Facebook page (post of 12 May 2022) (<https://bit.ly/3RLW1Fk>).

¹⁴ Council of the EU (2020). Belarus: Declaration by the High Representative on Behalf of the European Union on the Presidential Elections. Press Release, 11 August 2020 (<https://bit.ly/3fVXdst>).

2021, p. 203). It merely confirms an assumption that the situation in Belarus was not perceived as one of the EU's top foreign policy priorities.

In its conclusions of 12 October 2020, the Council of the EU followed the same path of critical engagement with a clear distinction between the country's society and political regime.¹⁵ Yet, its content analysis reveals two key concepts. The first is Lukashenka's legitimacy as the president of Belarus. While confirming that the election was "neither free nor fair", the Council concluded that Lukashenka "lacks any democratic legitimacy", and supported the "legitimate calls [of the Belarusian people] for new, free and fair presidential elections in line with international standards and under the OSCE/ODIHR's observation".¹⁶ At the same time, the Council Implementing Decision¹⁷ and Council Implementing Regulation¹⁸ of 2 October 2020, as well as all further similar documents adopted on 6 November¹⁹ and 17 December 2020,²⁰ contain the phrase about restrictive measures "against Belarus" or "in respect of Belarus" in their titles. Hence, at first glance, no distinction between the regime and society is made. Yet, the contents of these documents clearly indicate the difference between the regime and society. Specifically, the documents adopted on 6 November inform that Lukashenka "lacks any democratic legitimacy" and expect that "the Belarusian authorities" will stop "repressions and violence directed against the Belarusian people". The documents adopted on 17 December mention the "brutality of the Belarusian authorities" and "support of the democratic rights of the Belarusian people".

Further deterioration of the Belarus–EU relations was caused by the forced landing of a Ryanair flight in Minsk on 23 May 2021. In its conclusions from the following day, the European Council condemned it proposing a further tightening of the restrictive measures against Lukashenka's regime and banning Belarusian Airlines from flying to the EU. These conclusions did not offer many units to assess, yet the document on one occasion used the form "Belarusian authorities".²¹ Thus, it is not possible to understand whether the EU treats Lukashenka's regime as not legitimate based only on this document and without knowing the previous context. The relevant Council Decision and Council

¹⁵ Council of the EU (2020). Council Conclusions on Belarus 11661/20. 12 October 2020 (<https://bit.ly/3fUmOLZ>).

¹⁶ Ibid.

¹⁷ Council Implementing Decision (CFSP) 2020/1388 of 2 October 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus (http://data.europa.eu/eli/dec_impl/2020/1388/oj).

¹⁸ Council Implementing Regulation (EU) 2020/1387 of 2 October 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (http://data.europa.eu/eli/reg_impl/2020/1387/oj).

¹⁹ Council Implementing Decision (CFSP) 2020/2130 of 17 December 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus (http://data.europa.eu/eli/dec_impl/2020/2130/oj); Council Implementing Regulation (EU) 2020/2129 of 17 December 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (http://data.europa.eu/eli/reg_impl/2020/2129/oj).

²⁰ Council Implementing Decision (CFSP) 2020/1650 of 6 November 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus (http://data.europa.eu/eli/dec_impl/2020/1650/oj); Council Implementing Regulation (EU) 2020/1648 of 6 November 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (http://data.europa.eu/eli/reg_impl/2020/1648/oj).

²¹ Council of the EU (2021). European Council Conclusions on Belarus 395/21. 24 May 2021 (<https://bit.ly/3SPKYG2>).

Regulation adopted on 4 June 2021²² also operates the term “Belarusian authorities”. The Regulation further specified that the Ryanair accident “constituted a further step in the repression of civil society and democratic opposition in Belarus”. While imposing a criterion for individuals and legal entities to be subjects of economic restriction if they, *inter alia*, for the economic restrictions “benefit from or support the Lukashenka regime”. Another peculiarity is that the titles of these documents slightly altered refer to the restrictive measures “in view of the situation in Belarus” and “in respect of Belarus”, and not “against Belarus” as before. This also presupposes a higher level of acknowledgment of the difference between the regime and the society. The documents adopted on 21 June largely repeated the rhetoric of its predecessors, yet their titles uniformly spoke about restrictive measures “in respect of Belarus”.²³

The conclusions of 25 June 2021 called for the release of political prisoners and to stop repressions. They also acknowledged “the democratic right of the Belarusian people to elect their president through new, free and fair elections”.²⁴ Thus, they implicitly made a distinction between Lukashenka’s regime and Belarusian society by acknowledging one of the major systemic problems of the Belarusian society that derives from the lack of transparent and competitive elections.

The conclusions of 22 October 2021 designated a migrant crisis on the Belarus–EU border as “the ongoing hybrid attack launched by the Belarusian regime” with the need to adopt relevant restrictive measures against those in charge of it.²⁵ At the same time, while confirming the strategic importance of the Eastern Partnership region for the EU, the Council again called on “the Belarusian authorities to release all political prisoners”. Yet, the concepts of “regime” and “authorities” imply a somewhat different degree of legitimacy for those who are referred to in these ways.

The relevant Council Implementing Regulation and Decision adopted on 2 December 2021,²⁶ inform about an “ongoing hybrid attack launched by the Belarusian regime” by the instrumentalisation of the migrant crisis at the Belarus–EU border. They also designate restrictive measures against those who are involved in “organising or contributing to activities by the Lukashenka regime that facilitate the illegal crossing of the external borders of the Union” and other related issues. Yet, the titles of these

²² Council Decision (CFSP) 2021/908 of 4 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (<http://data.europa.eu/eli/dec/2021/908/oj>); Council Regulation (EU) 2021/907 of 4 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (<https://eur-lex.europa.eu/eli/reg/2021/907/oj>).

²³ Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (http://data.europa.eu/eli/reg_impl/2021/997/oj); Council Regulation (EU) 2021/996 of 21 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (<http://data.europa.eu/eli/reg/2021/996/oj>).

²⁴ Council of the EU (2021). Council Conclusions EUCO 7/21. 24 and 25 June 2021 (www.consilium.europa.eu/media/50763/2425-06-21-euco-conclusions-en.pdf).

²⁵ Council of the EU (2021). Council Conclusions EUCO 17/21. 21 and 22 October 2021 (www.consilium.europa.eu/media/52622/20211022-euco-conclusions-en.pdf).

²⁶ Council Implementing Regulation (EU) 2021/2124 of 2 December 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (http://data.europa.eu/eli/reg_impl/2021/2124/oj); Council Implementing Decision (CFSP) 2021/2125 of 2 December 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (http://data.europa.eu/eli/dec_impl/2021/2125/oj).

documents refer to the above restrictive measures “in view of the situation in Belarus” and “in respect of Belarus”.

A similar approach can be found in the conclusions of 16 December 2021.²⁷ While condemning the humanitarian crisis at the Belarus–EU border, the Council refers to “the Belarusian regime”. In the next sentence, it confirms the EU’s readiness “to counter the hybrid attack launched by Belarus”. Finally, while raising the issue of a new election in Belarus, the Council speaks about “the democratic right of the Belarusian people”. Hence, the wording of these conclusions makes a controversial impression within one document. The phrase “launched by Belarus” implicitly equates Lukashenka’s regime with the entire country and, thus, indirectly suggests the regime’s full legitimacy as if it possesses a sufficient public mandate to instrumentalise the migration crisis. Yet, the references to the “Belarusian regime” and the “Belarusian people” suggest the opposite.

The EU based the logic of its Belarus-related policies on the coupling of the concepts of democracy and legitimacy. Hence, between August 2020 and February 2022, the EU continued to pursue its critical engagement policies toward Belarus. It was quite dynamic, as it addressed the ongoing changes, but predictable. Yet, the Belarus-related agenda was not a priority for the EU. The pre-war EU approach generally distinguished the deeds of Belarus’s authoritarian *de facto* ruler from the society, and in most cases did not equate the actions of the Lukashenka Administration with the policy it claims to represent. While the EU documents generally addressed the difference between Lukashenka’s regime and the Belarusian people, some of the formulations contained patterns of inconsistency implying a different degree of the regime’s legitimacy or even equating it with the entire country. This diverse approach neither contributed to the consistency of the evaluation of the situation in Belarus, nor to the development of a unified EU-wide vocabulary on how to address the situation in Belarus and other accompanying issues. Interestingly, the word “authorities” in the EU documents seems to be predominantly used when referring to the capacity of the Lukashenka regime to effectively exercise power and issue the decisions binding within the territory of Belarus and affecting its population. This was merely based on the logic that any authority, be it legitimate or not, is capable to issue legitimate decisions, like the release of political prisoners.

5. The 2022 wartime: Does an apparent victim deserve to be punished?

The previous inconsistencies in distinguishing between Lukashenka’s illegitimate regime and the policy it claims to represent became even more evident after 24 February 2022 when Russia started the war against Ukraine. As cited above, the European Council’s conclusions of 24 February “strongly condemn[ed] the involvement of Belarus in this aggression against Ukraine and call[ed] on it to refrain from such action and to abide by its international obligations”. This formulation rather refers to Belarus as a polity

²⁷ Council of the EU (2021). Council Conclusions EUCO 22/21. 16 December 2021 (www.consilium.europa.eu/media/53575/20211216-euco-conclusions-en.pdf).

without any insight or specification of what is taking place there and whether its political regime is legitimate. Another phrase of the conclusions about the need for “further individual and economic sanctions package that will also cover Belarus” also suggests a blurring of contexts, involving the country, its citizens irrespective of their political positions, and the *de facto* ruling regime.

Further EU documents from the early period of the war continue this trend. The quotation from Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy, available in the EU press release of 2 March 2022 contains a very strong normative evaluation. Borrell spoke about “Belarus’ involvement” in the aggression that “will come at a high price”.²⁸ The next sentence of the quotation specified that the countermeasures would focus on “those in Belarus who collaborate with these attacks against Ukraine”. However, the analysis of this press release reveals a lack of divisive line between the political regime in Belarus and the country’s civil society. An alternative interpretation of this could suggest that various spokespersons in charge of these types of documents might have different degrees of awareness about Belarus’s domestic contexts and evaluation of the gravity of the situation there. In any case, its message was widely distributed in the mainstream media, implicitly affecting public opinion and creating additional opportunities for its interpretation. As mentioned in the introduction, the Council Implementing Regulation and Decision of 2 March 2022 claimed that “Belarus is participating in the Russian military aggression against Ukraine” by providing Russia with the possibility to use its territory to fire missiles, transport weapons and personnel, use airspace, providing its refuelling points and storing Russia’s weapons and equipment.²⁹ Again, this wording removed any context of Belarus’s domestic political situation from the discussion focusing on the activities of the illegitimate regime and equating it with the entire country. In practical terms, this type of narrative resulted in numerous examples of hate speech and other manifestations of discrimination against Belarusians³⁰ as a group jointly defined by the criteria of citizenship, ethnicity and language. Many of those who experienced it were forced to flee the country after the 2020 presidential election escaping from the repressions and arbitrary persecution. It is worth returning to the example of Czechia specified above. For instance, an explanatory note of Law 175/2022 Sb of 22 June 2022 on further measures in connection with the armed conflict on the territory of

²⁸ Council of the EU (2022). Belarus’ Role in the Russian Military Aggression of Ukraine: Council Imposes Sanctions on Additional 22 Individuals and Further Restrictions on Trade. Press Release, 02 March 2022 (<https://bit.ly/3rEW18E>).

²⁹ Council Implementing Regulation (EU) 2022/353 of 2 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; Council Decision (CFSP) 2022/354 of 2 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

³⁰ For details see Belsat TV (2022). Nie złamanyja dyskryminacyjaj. Jak pačuvajucca bielarusy ū emihracyji pasla pačatku vajny [Not Broken by Discrimination. How Do Belarusians in Emigration Feel after the Start of the War] 26 August 2022 (<https://bit.ly/3Chy9nb>); Onet.pl (2022). Fala nienawiści i hejtu w sieci wobec obywateli Białorusi [A Wave of Online Hatred and Hate against Belarusian Citizens] 05 March 2022 (<https://bit.ly/3rEDHmT>).

Ukraine caused by the invasion of the troops of the Russian Federation (known as Lex Ukraine II)³¹ claims that:

From the point of view of international law, the Russian Federation and the Republic of Belarus committed aggression against Ukraine in violation of para 4 Article 2 of the UN Charter, which was confirmed by the UN General Assembly Resolution No. A/RES/ES-11/1.

The text of this resolution³² mentions Belarus just once deploring its involvement in “this unlawful use of force against Ukraine, and calls upon it to abide by its international obligations”. However, it does not contain any specification of this involvement and the reasons thereof. In turn, Resolution No. A/RES/ES-11/1 contains the reference to Resolution No. A/RES/3314(XXIX) of 14 December 1974 which defines aggression.³³ Among other things, this Resolution establishes that “the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case”. Consideration of all circumstances and addressing Belarus’s domestic contexts allowed representatives of the Belarusian opposition to pursue an advocacy campaign claiming that Belarus has been occupied by Russia.³⁴ The demonstrated clash of possible approaches towards Belarus reveals that the literal and contextual interpretations of the same situation can lead to antipodal assessments – (co-)aggressor v. victim of aggression. In respect thereof, the question arises whether the literal justifications, like in the case of Czechia, should decouple the concepts of the state and legitimacy of its political regime considering the capabilities of a given society to freely elect its political leadership in a transparent and fair election. If it overtly or implicitly bounds these two concepts, it *de facto* acknowledges the responsibility of the society of a given country for any political regime that exists in it regardless of whether it is legitimate or not.

The documents adopted on 9 March, 8 April and 3 June 2022³⁵ did not offer anything conceptually new in terms of the interpretation of Belarus’s involvement in Russia’s war in Ukraine. Yet, their titles and content are more balanced in terms compared to the statements from the early days of Ukraine’s war. They address two important issues. First, the titles of all relevant documents (2022/398, 2022/399, 2022/577, 2022/579, 2022/876 and 2022/877) refer to “the restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine”. In other words, Russia’s aggression against Ukraine was just one part of the puzzle that triggered them.

³¹ Chamber of Deputies of the Parliament of the Czech Republic (2022). Sněmovní tisk 221/0 Vln.z. o někt.opatř. v souv. s ozbroj.konfliktem – Ukrajina [Parliamentary Press 221/0 Government Bill on Some Measures in Connection with the Armed Conflict – Ukraine] 05 May 2022 (www.psp.cz/sqw/historie.sqw?o=9&t=221).

³² Resolution adopted by the General Assembly on 2 March 2022, A/RES/ES-11/1 Aggression against Ukraine. UN Documents. March 18 (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf>).

³³ Resolution adopted by the General Assembly on 14 December 1974, A/RES/3314(XXIX) Definition of Aggression against Ukraine. UN Documents. March 18 (<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf>).

³⁴ National Anti-Crisis Management (2022). Russia has occupied Belarus. 16 March 2022 (<https://belarus-nau.org/en/news/tpost/zx8sj4nal1-russia-has-occupied-belarus>).

³⁵ For details see note 5 above.

Moreover, participation of Lukashenka's regime in it is qualified as "involvement". Belarus is neither directly labelled as a (co-)aggressor, nor the issue of the legitimacy of its political regime is raised. The reference "Belarus" in the documents also implies a lack of clear distinction between the de facto administration and the Belarusian society. The other one was caused by the domestic developments in Belarus. Second, items 1(b) of Article 1w of the Council Regulation 2022/398 and 5(b) of Article 2u of the Council Decision (CFSP) 2022/399 of 9 March 2022 suggest that the restrictions on Belarus-based individuals and legal entities in the EU-based credit institutions may be lifted if the relevant deposits are "necessary for civil society activities that directly promote democracy, human rights or the rule of law in Belarus". The above titles and formulations, therefore, confirm that the EU is concerned by the domestic developments in Belarus and committed to promoting human rights, democracy and rule of law in this country. Yet, the above documents also mean that certain individuals and businesses non-affiliated with Lukashenka's regime might be affected by the sanctions.

A partial shift toward a more balanced approach between Belarus's domestic developments and the war in Ukraine can be identified in the Declaration by the EU High Representative on the second anniversary of the fraudulent presidential elections issued on 8 August 2022, which serves as an example of the aforementioned inconsistency of approaches.³⁶ This document acknowledges that the fraudulent election has "stripped Belarusians of the opportunity to freely choose their own future" and confirms that Lukashenka's regime "lacks any democratic legitimacy". It mentions over 1,200 political prisoners and numerous others who went through repressions or were forced to leave the country, as well as the crimes committed by the regime against its opponents after the 2020 election. Yet, Lukashenka's regime is labelled as "an accomplice" of Russia's aggression against Ukraine. It follows this path "against the will of the vast majority of the Belarusian people" and "persecutes Belarusians for standing up against the war". While claiming that the EU's "determination to support the people of Belarus remains unchanged" and the country's sovereignty and independence, the document, on two occasions, designates Lukashenka's regime as "the authorities in Belarus". This formulation deals with a call to the regime to respect human rights, stop collaborating with Russia in its aggression against Ukraine, and maintain an inclusive dialogue within Belarus's society resulting in a free and fair election.

Russia's military aggression against Ukraine changed a wider Europe. Because of its gravity, it became one of the key points of the EU policies. For Belarus, its society, and Lukashenka's regime it had two major implications. First, all previous EU restrictive measures remained in force, being updated based on the principle of critical engagement; Belarus-related agendas also failed to become one of the EU's top priorities. Second, the Belarusian agenda was put into the context of the armed conflict between Russia and Ukraine which was largely determined by the position of Lukashenka's regime in it. As the above analysis demonstrated, it partially resulted in the coupling of the illegitimate Lukashenka's administration with the state with little to no focus on the domestic

³⁶ Council of the EU (2022). Belarus: Declaration by the High Representative on Behalf of the EU on the Second Anniversary of the Fraudulent Presidential Elections. Press Release, 08 August 2022 (<https://bit.ly/3CJApoD>).

developments in the country that resulted in this situation. This attitude also produced clashing approaches to the Belarusian case ranging within the binarity “victim of the aggression – (co-)aggressor”. For the Belarusian political opposition and the civil society, it posed additional challenges to lobby the view of Belarus as a victim of Russia’s aggression and a more pronounced focus on the distinction between the Belarusian society and Lukashenka’s regime. Yet, as the evidence shows there is no unequivocal shift from the literary coupling of the state and political regime in the EU and some individual Member States towards a more comprehensive approach based on the contextual interpretation of the situation within Belarus.

6. Conclusion

The analysis of the EU documents pertinent to the situation in Belarus after the 2020 presidential election reveals two chronological periods. The first one ranges from the elections till the end of February 2022 when Russia’s aggression against Ukraine and the so-called constitutional referendum in Belarus chronologically coincided. This period was determined by the domestic developments in Belarus and the EU’s critical engagement policies that promptly addressed the dynamics of the changes. Yet, Belarus never became a priority for the EU policies and it had very limited capacities to effectively influence the situation in the country. Yet, the analysis provides evidence that the EU generally made a distinction between the illegitimate regime centred around Lukashenka and the Belarusian society that was involved in massive and durable protests against the fraudulent election and repressive nature of the regime. However, these differences were not always consistent and failed to develop a common vocabulary among the EU bodies and individual Member States pertinent to the comprehensive assessment of the internal developments in Belarus. Apparently, by doing so the EU might have expected that the illegitimate Lukashenka Administration could issue some legitimate decisions such as the release of political prisoners.

After February 2022, the situation changed significantly. Belarus-related agendas became inscribed into the context of Russia’s war in Ukraine due to the involvement of Lukashenka’s regime in this unlawful act. Yet, this had negative implications for the Belarusian society. It is evident that in a partial coupling of Belarus as a polity with the activities of Lukashenka’s regime that de facto rules the country is substantially backed by the Kremlin. As a result of this attitude, the patterns of the literal interpretation of the regime’s action become evident and even dominant, as the Czech example demonstrates. Hence, it is not uncommon that Belarus is perceived as a co-aggressor which implies the responsibility of the entire society with little to no consideration of its actual capacities to change the repressive political regime. Thus, the concept of the state, legitimacy of the political regime, and accountability of the society for its deeds are at least implicitly linked.

A more comprehensive approach to decouple the regime and society is present in the EU documents but it still fails a clear pronounced focus affecting practical measures aimed at countering Russia’s aggression in Ukraine. In this regard, the view of Belarus as another victim of Russia’s aggression (or a country occupied by Russia) is not unreasonable as

it considers all the circumstances of Belarus's particular case including the domestic political context before and after the 2020 presidential election. Yet, the Belarusian political opposition must advocate a comprehensive approach to achieve a clear shift to acknowledge a pronounced focus at the EU and its individual Member States levels on the distinction between the Belarusian society and Lukashenka's regime. Overall, the case of Belarus demonstrates the vulnerability of smaller states with authoritarian regimes vis-à-vis huge political turbulences, like the war in Ukraine, as its civil society and political opposition have to be mobilised to simultaneously counter both domestic and international challenges caused by the actions of the illegitimate authoritarian regime. The success of these endeavours significantly depends on the international solidarity and ability of the EU and other international actors to decouple the state as a polity, its political regime, and the society both in official rhetoric and legislative documents.

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