



A Kafkaesque Farce. ODF's response to the allegations against B. Kramek

The Public Prosecutor's Office has accused Bartosz Kramek, an activist and the Chairman of the Foundation's Supervisory Board, of "laundering money originating from the crime of a false statement". What was not elaborated upon was the content of the false statement, the issue of which invoices were issued and why the company's transparent and publicly known support of the Foundation would constitute money laundering. The lack of evidence, however, has not prevented the Prosecutor's Office from pressing charges against Bartek (which carry a maximum sentence of 8 years in prison) and from phrasing them as if they constituted a final judgement in the case. In the statement below, we address, in bullet points, all the absurd accusations leveled against ODF by the Public Prosecutor's Office as well as the media controlled by, or supporting, the current ruling party. We also list the gross violations committed by the Prosecutor's Office in the arrest and detention of Bartek, as well as the motives behind the political persecution of ODF.

*Due to the fact that we still do not have access to the case file, we are relying solely on the amounts and information from the Public Prosecutor's statement, as well as those of the government's propaganda media outlets.

1. Allegations regarding alleged money laundering and "agents of Russian influence"

- **Bartek's firm was engaged in "laundering money originating from the crime of a false statement" - FALSE**

The Prosecutor's Office has brought up serious allegations, but it has not explained the nature of the false statement, the issue of which invoices were completed and why the company's transparent and publicly known support of the Foundation would constitute money laundering. We will explain what work the company, owned by Bartosz Kramek, was involved in and the ties that it has to ODF.

Silk Road Biuro Analiz i Informacji sp. z o.o. (SR) carried out analytical and advisory services. In particular, the company specialized in risk assessments (including investment, image, and legislative risks) tied to the entry of foreign private sector entities into Eastern markets (Kazakhstan, Ukraine, and Moldova). Occasionally, the company provided consultancy on how to conduct business in the European Union (mainly for Ukrainian entrepreneurs), as well as seeking contractors and financing for investment projects, including in capital markets. The second branch of the company's activities were services in the field of new technologies, primarily VOIP internet telecommunications and online streaming, in addition to, later on, software development and employee recruitment.

Among other instances, we described the activities of SR in an interview with Gazeta Wyborcza [1], [2] on the 12th of September, 2017.

The company cooperated with the Open Dialogue Foundation (ODF), to which it was personally tied. SR was one of ODF's donors. All donations to ODF are subject to appropriate records and accounting procedures (as they make up income from statutory activities). As a result, full transparency is maintained. In addition, despite the fact that there is no legal obligation for foundations to disclose their donors' information, the Foundation has, for years, voluntarily disclosed the full list of donors in its [financial reports](#), published annually and made available on our website. Naturally, this also applies to income from SR.

We have also never hidden the fact that SR has financially aided the statutory work of the Foundation, the goal of which is to defend and promote the rule of law, human rights, and democracy in post-Soviet states. This model, well known among Western NGOs, has, among other things, ensured our relative financial stability (which has allowed us to continuously carry out the Foundation's mission), and ensured our independence from public sector funding. The actions of the Internal Security Agency (Polish: ABW), particularly the harassment of SR's co-workers and contractors by means of tax audits or requests for statements, led to the collapse of the company and its filing for bankruptcy.

- **SR issued “fictitious invoices” for millions of Polish złoty (implying money laundering) – FALSE**

The Prosecutor's Office cites evidence in the form of “fictitious invoices” issued by SR and claims alarming, multi-million turnover, suggesting that this money was “laundered”. Let's break down the 5.3 million Polish złoty (for simplicity's sake we will round up the numbers to whole ones) and explain what it was spent on.

According to the Prosecutor's Office, from August 2012 to February 2016, the company issued 46 invoices for the sum of 5.3 million Polish złoty (or 1,173,001 euros, according to the exchange rate on June 25th, 2021). The allegations, therefore, relate to a period of three and a half years, or 42 months. Although we don't have access to the company's accounting records, which were confiscated by ABW, it is doubtful that the Prosecutor's Office understated the total amount of invoices. The average monthly income of the company was, therefore, approximately 126,190 Polish złoty, or 27,928 euros.

Between 2012 and 2016, the firm worked with a grand total of 46 people (including interns hired for several months for internships). The company paid all the taxes and fees it owed, including for all the aforementioned coworkers (including corporate tax, social and health insurance contributions, and other required charges). In addition, the company incurred costs for work-related travel for employees, office spaces and supplies, cleaning services, translators, accounting and legal services. The company spent the bulk of its revenue on these recurring expenses.

In light of this, a question comes to mind: how much money from the national treasury, i.e. Polish taxpayers' money, did the authorities spend on the proceedings against the activist and chairman of ODF's Supervisory Board and his company, which have been ongoing since 2018? The Minister-Coordinator of the Secret Services, Mariusz Kamiński – [non-finally sentenced](#) in the first instance for exceeding his powers and illegal operational activities – is known for spending state money on legally dubious operations (e.g. [the case of Agent Tomek](#)). It is also telling that a company with an average

monthly turnover of 126,190 Polish złoty (or 27,928 euros) – **which, nota bene, qualifies it as a micro-business under the provisions of the "entrepreneurs' rights" act – is being turned into an embezzler on a gigantic scale.**

The allegations also refer to a period (particularly from 2015 to 2016) that was extremely financially difficult for ODF and SR and in which the Foundation's energy was directed towards a wide range of assistance – including financial – to Ukrainian civil society after the Euromaidan Revolution. During this period, SR financially supported ODF, including through a debt incurred by SR from Bartosz Kramek and Lyudmyla Kozlovska, which remains unpaid to this day.

- **Revenue in SR's accounts came from "fictitious" entities registered in tax havens (implying money laundering) – FALSE**

The Public Prosecutor's communiqués are loaded with terms designed to evoke negative emotions in the audience, such as tax havens, Panama Papers, illegal sources of income, and virtual offices. In reality, these statements only contain hypotheses and speculations. These allegations are also identical to those which came from Moldova in 2018, ruled by the corrupt oligarch V. Plahotniuc and which, in 2020, were dismissed in their entirety and deemed "political" both by the [Moldovan Prosecutor-General](#) as well as [Polish courts](#) (as pointed out by P. Pytlakowski from the [Polietyka](#) weekly). We will explain why these allegations do not relate to any illegal activities whatsoever, or are simply false.

Just as there are no laws which prohibit foundations from being funded by their leadership, there are no laws which prohibit doing business with companies registered in virtual offices in the United Kingdom (moreover, such offices are the norm in many industries, such as IT). Additionally, there are no laws which prohibit conducting business with firms registered in either the Seychelles, Belize, or Panama (a fairly common practice even for large companies).

The same is true of companies listed in the so-called Panama Papers – in which the information of over 200 thousand companies from all over the world are contained. The only thing they have in common is that they used the advisory services of what was once one of the largest financial advisory firms – Mossack Fonseca. Given the number of foreign contractors (mainly in the sector of new technology) that Bartosz Kramek's company, Silk Road, has had over the years, it is not difficult to find at least one of each of the countries mentioned, let alone an entity included in the documentation (whatever that means) in the so-called Panama Papers (see [more](#)).

Finally, as we pointed out in [our statement from the 23rd of June](#), the Prosecutor's Office applies logic, or rather a lack of it, in a style typical of the rhetoric of the ruling Law and Justice party (PiS). Whereas, usually, taxpayers are accused of dishonest actions to the detriment of the state treasury, in the case of Bartek's company, the Prosecutor's Office is questioning revenue on which taxes and other mandatory fees were properly paid. Previous tax audits (which have dragged on for years) have not revealed any irregularities in SR's activities. Therefore, the Public Prosecutor is defending foreign entrepreneurs and the budgets of other countries for which SR provided services. What is even more absurd is that this discussion is centered around entities registered in tax havens.

- **ODF is an "agent of Russian influence" – FALSE**

The representatives of the government and media outlets which support it claim that ODF is an “agent of Russian influence”, from which a significant part of the Foundation’s income has allegedly originated. ODF was also allegedly transferring funds received from SR “back abroad to the accounts of Russian and Ukrainian citizens” (i.a. the main broadcast of the state-owned [Wiadomości TVP](#) on the 24th of June, 2021 [starting at 23 minutes and 30 seconds] and [tweets](#) of the spokesperson of the coordinator of secret services, Stanisław Żaryn). We will explain why these allegations are as credible as TVP is today.

All the revenue of ODF is meticulously recorded, and in the event of any suspicion – in accordance with the Act on Counteracting Terrorism and Money Laundering – it is obligatorily reported by the Foundation's accounting office to the General Inspector of Financial Information (such cases, however, have not taken place so far). As we have stressed, despite the absence of a legal requirement, we disclose the personal information of our donors in [financial reports](#) published on our website. The Foundation also underwent numerous audits from both fiscal and [national security](#) agencies between 2013 and 2016, which revealed no irregularities. In addition, ODF, as a holder of a license from the Ministry of Interior to conduct business activity through the trading of certain products for military or police use (in connection with the need to deliver bulletproof vests and helmets as part of humanitarian aid to Ukraine) underwent a [review process](#) conducted by the Police, ABW and the Military Counterintelligence Service, among others. The verification process ended favourably. We assume, therefore, that the aforementioned institutions ruled out possible dangerous connections (such as being foreign agents or posing a threat to the Polish state, security, or public order) which the ruling party’s narrative has suggested.

The Foundation, and its activities, remains independent of its donors and clearly cannot be held responsible for the possible changes of their fate (e.g. the "change of side" by Ukrainian citizens after the annexation of Crimea). Possible cases of undue influence on our activity on their part, in the interest of foreign countries, would be immediately reported to the relevant authorities. In fact, in the history of its operations, the Foundation has [reported](#), on numerous occasions, suspicious activity undertaken by foreign bodies on the territory of Poland to the ABW (including their propositions directed to us).

Finally, accusations that ODF is supposedly an "agent of Russian influence" are all the more bizarre when we take into account the fact that the Foundation is one of the most effective pro-Ukrainian and anti-Kremlin organisations in Poland and Europe. We are best known for activities such as:

- defending political prisoners in Russia [\[1\]](#), [\[2\]](#) and campaigning for sanctions against Russia [\[1\]](#), [\[2\]](#), [\[3\]](#), [\[4\]](#), [\[5\]](#);
- support for Ukrainian civil society after the start of the Euromaidan Revolution, including the delivery of over 1 million Polish złoty (around 250,000 euros) worth of humanitarian aid [\[1\]](#), [\[2\]](#), [\[3\]](#);
- combating pro-Russian groups in Poland – such as the “Zmiana” party [\[1\]](#), [\[2\]](#) or contributors to the anti-Ukrainian website Kresy.pl [\[1\]](#), [\[2\]](#);
- running a support centre for Ukrainian refugees and immigrants between 2014 and 2016, called “[Ukraiński Świat](#)”, which provided services to over 30,000 Ukrainians in Poland;
- [effectively defending](#) numerous members of the Russian opposition, civil society activists, and independent journalists against politically motivated extradition, between 2013 and 2016 (i.a. [the coworkers of Russian businessman and philanthropist Mikhail Khodorkovsky, Nikolay Kobliakov, Vitaliy Buntov and Nafis and Rafis Kashapov](#));
- [a campaign](#) which aimed to stop the delivery of Mistral warships from France to Russia in 2014;

- [initiating](#) the so-called “[Savchenko List](#)” – the basis for personal sanctions against Russian officials, which has received the support of the [Russian opposition](#), [57 MEPs](#), the leaders of five then-EU countries: the United Kingdom, Poland, Romania and Sweden, as well as Ukraine;
- the implementation of [a programme funded by USAID](#), which led to the adoption of a lustration law against corrupt Yanukovich-era officials with ties to Russia. The law was harshly criticised by Russian Foreign Minister Sergei Lavrov;
- the [#LetMyPeopleGo](#) campaign, which ODF co-coordinated, to free Ukrainian hostages of the Kremlin, with notable successes including the release of 35 political prisoners, including [Oleg Sentsov](#) in 2019 and the release of [Nadia Savchenko](#) in 2016;
- a successful [viral campaign](#) against a Russian government official who intended to become the new head of INTERPOL in late 2018;
- advocating for the exclusion of the Russian delegation from the Parliamentary Assembly of the Council of Europe, following Russia's aggression against Ukraine in 2014, and protesting against the lifting of those sanctions in the following years [\[1\]](#), [\[2\]](#), [\[3\]](#), [\[4\]](#);
- [campaigning](#) in the European and international arena, in response to Russian aggression, for the imposition of economic sanctions against the country and its strategic assets, and [personal restrictions](#) against key Russian officials for violating Ukrainian sovereignty, [international law](#) and [human rights](#).

We also want to point out that these accusations are not new. The right-wing press, in addition to the government mouthpiece TVP, have been repeating them like a mantra since 2017, despite a lack of evidence. We have refuted these allegations repeatedly in our statements [\[1\]](#), [\[2\]](#), [\[3\]](#), [\[4\]](#), [\[5\]](#). Moreover, in September 2019, the Regional Court in Warsaw [confirmed numerous violations of ODF's personal rights by Telewizja Polska S.A.](#) regarding the same allegations. According to the court, these were based on, among other things, "manipulations" or "unspecified allegations". The court also pointed out "inaccuracies", "assessments of facts having nothing to do with reality" and "completely one-sided reporting" by TVP.

2. Blatant irregularities in the arrest and detention of Bartek

A number of actions taken by the Prosecutor's Office in the case of the arrest and detention of Bartosz Kramek violate basic principles of the rule of law and the procedures associated with it. In a conversation with a journalist from OKO.press [an independent media outlet which aims to defend the rule of law in Poland], a widely respected prosecutor [harshly criticised the actions of law enforcement bodies in the case of the arrest and detention](#) of the Chairman of ODF's Supervisory Board, calling them a "farce", "bizarre" and a "showpiece" arranged "for political order". We strongly object to the actions of the Prosecutor's Office, which include, but are not limited to:

- **Use of disproportionate coercive measures (excessive force) against Bartosz Kramek, in the complete absence of grounds for detention.** Bartosz was arrested in Warsaw and transported to Lublin (which took place the day after he received the second dose of the COVID-19 vaccine and in spite of his complaints of weakness and headache). Making reference to the supposed risk of obstructing the investigation, the prosecution also requested that Bartek be subjected to the most severe form of preventive measure – 3 months of pre-trial detention. In reality, there are no premises, or risks of obstruction or going into hiding, which could constitute a reason to arrest the chairman of ODF's Supervisory Board. In the dozens of other cases brought against Bartosz Kramek and ODF by state agencies, Bartek has never

evaded questioning, hearings, etc. Moreover, more than 5 years have passed since the acts he is accused of, and the Public Prosecutor's proceedings in this case have been ongoing since 2018. During this time, Bartosz has not made a single attempt to unlawfully influence the proceedings whatsoever.

- Obstructing the defence counsel's access to information and from meeting with the detainee (a meeting did not take place until the evening of June 23rd, despite the fact that Bartosz was detained at 11:00 in the morning).
- Obstructing access to the case file. The defence counsel had only one and a half hours to consult 40 volumes of the case file before the start of the remand hearing.
- A bizarre way of handling a motion for arrest. The first hearing was scheduled for half an hour, despite the fact that the Prosecutor's Office boasts of having collected 40 volumes of case files. According to a well-respected [prosecutor](#) in the field: "even if someone is caught red-handed stealing in a shop – a very simple case – the court must have time to read the files". In the end, the session was postponed by 1.5 hours to allow Bartosz's defence counsel to arrive in Lublin. It is not known, however, whether the court even familiarised itself with the case files before the hearing, as the files were being read during this time by a member of Bartek's defence counsel. Meanwhile, when the court begins a hearing, it should have full knowledge of what evidence has been collected and whether it warrants the use of the strictest form of preventive measure.
- The wording and phrases used in statements made by people representing law enforcement agencies which imply the establishment of guilt [\[1\]](#), [\[2\]](#), despite the fact that, according to the fundamental principles of criminal law, the guilt or innocence of the subject can only be decided by the court. This violates an elementary principle of the rule of law, which is the presumption of innocence.
- The Public Prosecutor's leaking of information from the case files to the pro-government media (as well as to ABW, in which the spokesman Żaryn was very active, among other officials).

The coincidence of the timing of the arrest of the Chairman of the Foundation's Supervisory Board and the coming into effect of amendments to the Criminal Code, the Criminal Procedure Code, the Misdemeanours Code and certain other laws is also of the utmost concern to us. Bartek was detained the day after prosecutors gained extensive powers and the right to actually decide on the arrest of suspects. Particularly worrisome are the changes to the rules regarding bail. Recall that in Bartosz's case, a cash bail of 300 thousand Polish złoty (around 66,200 euro) was issued, which exceeds the financial capacity of Bartosz Kramek and Lyudmyla Kozlovska, after their company was de facto destroyed as a result of a campaign by state bodies controlled by PiS.

The new provisions have not yet been described in any commentary to the law, nor have they been clarified in case-law. However, from experience so far, it can be concluded the Prosecutor's Office will misuse these provisions in order to refuse to accept cash bail without the consent of the Public Prosecutor, who can question the source of bail funds based on its own judgement. At the same time, the rules do not specify how long the Prosecutor's Office has to verify the source of the funds, which means that it can drag out the case at will and keep the suspect in custody even if they have paid bail. The amendment also introduces a ban on funding bail from public fundraisers, threatening arrest and/or a fine, as well as the confiscation of the money, for people organising such fundraisers. The coincidence of the timing of the arrest of Bartosz Kramek and these amendments entering into effect is also interesting, given the fact that he is known for co-organising public fundraisers, including collecting over [half a million Polish złoty](#) (around 110,400 euro) for billboards ridiculing and exposing the abuses of those in power (see e.g. coverage in [Rzeczpospolita](#)).

3. Political revenge

After strongly speaking out against violations of the Constitution and the rule of law in Poland, we have been subjected to unprecedented attacks by the Polish government and broader right-wing groups since 2017 (see, for example, [1], [2], [3], [4], [5], [6], [7], [8]). We consider the detention and arrest of the Chairman of ODF's Supervisory Board as another in a series of politically motivated attacks on ODF and as revenge for our actions in defence of the rule of law and the lawsuits brought against PiS politicians and the media/journalists which support them.

In 2019, ODF filed as many as [20 lawsuits](#) against PiS politicians and the propaganda media outlets which support them and their representatives for violations of personal rights. So far, in all cases where the Plaintiffs (ODF, SR, Bartosz Kramek and Lyudmyla Kozlovska) filed motions requesting security of claims – including with [Telewizja Polska S.A](#) and [Polskie Radio](#) – the civil courts, during the preliminary hearing of the lawsuits, ruled that the Plaintiffs were correct in their accusations, given the accusations made by these media being unproven, and therefore unreliable. The remaining cases will now be stalled because of the arrest of the Chairman of ODF's Supervisory Board. The timing of Bartek's arrest additionally coincided with the day on which two hearings in ODF's case against Tomasz Sakiewicz (editor-in-chief of Gazeta Polska) and Wojciech Biedroni (publicist of wPolityce.pl) were scheduled.

ODF has been running the, hated by PiS, Facebook page [“SokzBuraka”](#) from April of 2021, which has been one of the other activities that have put us in the government's crosshairs. Since the beginning of this year, as part of the [“Hall of Shame” project](#), we have been collecting evidence of violations of the law committed by officials of PiS in order to help – after the political situation changes and law enforcement bodies have are depoliticised – to bring to justice those who presently enjoy the protection of those in power. In recent months, as a part of the project, we have published the faces of the most important officials of the ruling party with their eyes covered with a black stripe – as in the case of defendants/convicted persons – on social media, assigning a legal classification to the acts they are accused of (e.g. [1], [2], [3], [4], [5]). We will not give up our work in these areas, as well as in other projects (such as an appeal against, and work regarding, police brutality against protesters that will be presented at the hearing before MEPs in mid-July).

The political aspect of the persecution of Bartosz and the ODF was also noted by observers of Polish politics, Polish and foreign activists and NGOs, experts in the rule of law field and foreign politicians – including [prof. Laurent Pech](#), [prof. Wojciech Sadurski](#), the leader of the All-Poland Women's Strike (Ogólnopolski Strajk Kobiet, OSK) [Marta Lempart](#), [Obywatele RP](#), foreign NGOs and human rights defenders such as [Human Rights Centre ZMINA](#), [Italian Federation for Human Rights \(FIDU\)](#), [Human Rights Protection Foundation Qaharman](#), [Veritas](#), [Femina Virtute](#), [Human Rights Movement '405'](#), former Kazakhstani political prisoners and activists [1], [2], [3], [4], [5], [6], as well as current and former MEPs from Spain, Germany, and Poland – [Isabel Santos](#), [Frank Schwabe](#), [Helmut Scholz](#), [Michał Boni](#) and [Róża Thun](#) (more reactions regarding Bartek's detention will be released in subsequent ODF communiqués).

We also make reference to the Foundation's statements to date, which respond to many of the allegations made by the Prosecutor's Office:

– [Polish Civil Society Under Assault: Chair of ODF's Supervisory Board detained on fabricated charges](#)

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- [The Open Dialogue Foundation's position as regards the anonymous study entitled '8 things you should know about the Open Dialogue Foundation'](#) from the 29th of March, 2016
 - [The Open Dialogue Foundation's statement of 31 July 2017 \(funding and donors, or a few words about 'soroses'\)](#);
 - [The statement and correction of Igor T. Miecik's articles \(Gazeta Wyborcza, 7 August 2017\)](#);
 - [Statement of the President of the Open Dialog Foundation Lyudmyla Kozlovska of 17.08.2017](#) (this statement refers directly to the report and to issues relating to the family of Lyudmyla Kozlovska);
 - [Statement on the results of the fiscal control and Internal Security Agency investigation](#) (26th of November, 2018)
 - [Statement re. alleged SBU investigation concerning Lyudmyla Kozlovska \(updated 26.11.2018\)](#)
 - [Statement on the defamatory article in the Sunday Times about the Open Dialogue Foundation](#) (29th of May, 2019)
 - [Commentary on the Sejm committee meetings of 25 April 2019 and attacks of Law and Justice parliamentarians on the Open Dialogue Foundation](#) (17th of June, 2019)
- as well as the most important summaries:
- [Activities for Ukraine and not only. Selected initiatives and projects of the Open Dialogue Foundation 2016-17](#);
 - [Open Dialogue Foundation's 2017 season's greetings and 2016 top achievements](#);
 - [Top achievements of the Foundation from 2010 to 2019](#)
 - [Background note on the international advocacy activities of the Open Dialogue Foundation coordinated by the Brussels office in 2013 – 2015](#);
 - [Summary of humanitarian aid provided by the Open Dialogue Foundation in 2015](#);
 - [An annual summary of the activities of the Open Dialogue Foundation for Ukraine](#);
- in addition to [substantive summaries](#) for specific years.

For any further information, please contact:

Martin Mycielski – martin.mycielski@odfoundation.eu

Katarzyna Szczypka – katarzyna.szczypka@odfoundation.eu

