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Bartosz Kramek: a bogus criminal investigation and arrest in Poland

The Open Dialogue Foundation (ODF) is a human rights NGO established in 2009 in Poland, with its headquarters in Brussels since 2018. Before 2017 the Foundation was known in Poland for its support delivered to Ukraine during the Euromaidan revolution and in response to Russian aggression. In 2017 the NGO took a stance in defence of the rule of law in Poland, which was met with a campaign of legal harassment and disinformation conducted by the PiS party and described, up to late 2019, in [this report](#).

The recent persecution of ODF's Supervisory Board Chair, Bartosz Kramek, is a continuation of this campaign and the unsuccessful attempts to shut down or paralyse the Foundation, which culminated in the 2018 [expulsion of ODF President, Lyudmyla Kozlovska](#), from the EU, and subsequently [three court decisions](#) reversing it (none of them implemented as of yet).

Below is a timeline of the arrest and pre-trial detention of Bartosz Kramek in mid-2021 and a list of the abuses of power in this case.

June 21

- Bartosz Kramek arrives in Warsaw on an evening flight from Brussels (entering the country without issues).

June 22:

- Bartosz Kramek participates in a court hearing, testifying against the editor-in-chief of the pro-government Gazeta Polska weekly, Tomasz Sakiewicz (sued for defamation by ODF).
- The [new law of 20/04/2021](#) amending the criminal code comes into force. The law limits and complicates the possibilities of posting bail, e.g. prohibiting using funds collected via a public fundraiser. ODF and Bartosz Kramek personally are known for having organised successful crowdfunding campaigns, collecting over PLN 1 mln for Ukraine's war effort against Russia (humanitarian aid) as well as over PLN 1 mln for anti-government billboards and COVID relief in Poland.

June 23:

- Around 11:00 Bartosz Kramek is arrested in his hotel by five high-ranking officers of the Internal Security Agency (ABW) and transferred to Lublin. The case is handled by prosecutor Marcin Kołodziejczyk from the Regional Prosecutor's Office in Lublin - known for [having been promoted and rewarded by Prosecutor General and Justice Minister Zbigniew Ziobro](#) - and overseen by Regional Prosecutor Jerzy Ziarkiewicz, also a close confidant of Ziobro, [known for carrying out highly-doubtful, politically sensitive investigations](#). Both are described in [the Lex Super Omnia association report](#) listing the disgraced prosecutors giving up their professional independence for career advancement.

- Numerous state and pro-government media outlets, as well as Spokesperson of the Minister Special Services Coordinator Stanisław Żaryn and the Prosecutor's Office, issue statements about the arrest, disclosing selected, distorted details of the investigation and charges, despite the suspect nor his attorneys not having learned them yet. The charges are art. 270 and 299 of the Polish criminal code, i.e. making false statements and money laundering.

- Around 16:00 Bartosz Kramek meets with his Lublin attorney Tomasz Przecieczowski and the prosecutor, claiming the political motives behind the investigation and invoking his right to refuse to testify despite various encouragements of the latter. As a result he is taken to a police detention centre, where the prosecutor hopes he would reconsider his position before another meeting the next morning.

- ODF publishes its [first press release](#) on the issue, highlighting the political nature of the case and the fully legal character of its activities as well as of the limited company run by Bartosz Kramek.

June 24:

- Around 10:00 Bartosz Kramek maintains his position, refusing to testify, much to the prosecutor's disappointment.

- Around 13:25 the prosecutor submits a request for pre-trial detention, with the Lublin district court (first instance) scheduling the hearing for 14:00, giving itself only half-an-hour to read supposedly 40 volumes of case files. Following a request of the defence the hearing was postponed by 2h, giving also the defence attorneys some minimal time to read the files and granting Bartosz Kramek's Warsaw-based attorney, Radosław Baszuk, time to reach the remote court.

June 25:

- The court announces its verdict: partially supports the prosecution's request, deciding on pre-trial detention conditional on a PLN 300.000 cash bail, with a delivery deadline of July 8th. The prosecutor notifies of planning to appeal the decision, meaning that - according to one of the new provisions, sponsored by the Prosecutor General, extending the power of the prosecution service - Bartosz will not be released until the appeal is considered, even if the bail is delivered. The decision to post bail to the court's account instead of the prosecutor office's permits avoiding any obstruction that would have likely been brought by the prosecution (as it has recently been the case in another political investigation - of the former opposition politician Sławomir Nowak).

- State and pro-government propaganda outlets hail the court's decision as proof of Bartosz Kramek's guilt, while independent media widely point to the political nature of the detention (e.g. [Gazeta Wyborcza](#), [Polityka](#), [Onet.pl](#), [Salon24](#)).

July 1:

- ODF publishes its [second press release](#), debunking each and every accusation of the prosecution, as widely presented by TVP and numerous other pro-government media.

July 7:

- Following a public appeal, 23 people - including pro-democracy activists, journalists, scholars and entrepreneurs - transfer parts of the bail, totalling over PLN 355.000. Bartosz's attorney notifies the court of the bail having been deposited on the court's account in its entirety.

July 14:

- 18 indemnitors from around the country arrive at the Lublin court to sign the bail deliverance protocol.

- [Gazeta Wyborcza](#), [Onet.pl](#) and [Verfassungsblog](#) publish [an international appeal](#) to release Bartosz Kramek and cease the persecution of ODF, initiated by Nobel Peace Prize laureate, president Lech Wałęsa, and signed by nearly 100 notable figures from around the world, including former political prisoners, statespeople and representatives of arts and sciences, as well as over 30 human rights organisations and other NGOs.

- [It is revealed](#) that the special services spokesperson and Director of the National Security Department at the PM's Chancellery, Stanisław Żaryn, personally emailed dozens of foreign signatories of the appeal, explaining the authorities' accusations and assuring of their allegedly apolitical nature. This "information campaign", as he called it, is [shocking](#) to the recipients, who [are worried](#) of being "targeted by Polish secret services". An [Italian senator calls it](#) a "state-sponsored black PR campaign against civil society" and "a new level of discrediting Poland in front of their European allies".

July 15:

- The Lublin regional court (second instance) rejects the appeals of both the prosecutor (for unconditional detention) and the defence (for no preventive measures), confirming the district court's verdict of conditional detention and thus accepting the PLN 300.000 bail. Bartosz is released late afternoon the same day, with no other measures being imposed by the court, nor announced by the prosecution.

- The prosecutor's office issues a press release, questioning the court's decision and insisting on the seriousness of the charges as well as alleged risks of fleeing the country and interfering with the investigation. It does not mention any preventive measures imposed by the prosecution.

- Pro-government media [accuse the judge](#) of being "a communist", politicised and biased, asking if Bartosz [will flee the country](#) upon release.

July 20:

- Bartosz Kramek's attorney's receive a notice by regular post of the prosecutor's decision to impose a ban on leaving the country on him, issued on July 15th and shared with the Border Guard. Some commentators and journalists see it [as a "trap"](#) set to triumphally catch Bartosz, unaware of the decision, at the airport, "trying to flee the country", expecting him to try to immediately return to his wife in Brussels. Currently, Bartosz cannot leave the country until the court reviews the defence's appeal to the prosecution's decision, which might take

several weeks. In this time - due to his wife's continuing entry ban - Bartosz is forcefully separated from his wife for yet another month, with leading legal scholars [like prof. W. Sadurski](#) and prof. Laurent Pech calling it a violation of the right to family life, as enshrined in the European Convention of Human Rights, the EU Charter of Fundamental Rights and Directive 2004/38/EC.

- Belgian senator Mark Demesmaeker [sends a letter to Belgian authorities](#), warning that Lyudmyla Kozlovska and, possibly, other members of ODF's team - Belgian citizens and residents - might become a target for political persecution by Polish authorities, who might try to abuse international legal cooperation mechanisms, such as European Investigative Orders or European Arrest Warrants.

July 24:

- Spokesperson of the Minister-Coordinator of Special Services, Stanisław Żaryn, publishes an op-ed on the state TVP INFO news portal, in which he throws further accusations and baseless, defamatory claims about Bartosz Kramek and ODF, including that defending him is actually an attack on the government, that ODF's activities are in reality a part of Russia's hybrid warfare against the West and that all of ODF's actions supporting Ukraine in the past were just a cover-up for its true intentions. Without providing any concrete links he equates ODF's activities with the operations of Russian money laundering crime groups operating in Poland on a large scale. For similar, defamatory accusations, TVP was already [forced to remove dozens of publications](#) about ODF following a 2019 court order.

Legal experts, among them prominent independent public prosecutors and attorneys, pointed out to numerous irregularities and worrying circumstances of the detention, charges and related law enforcement actions:

- The arrest was conducted just one day after the entry into force [of a new law](#), strengthening the role of the prosecution service - like giving it powers previously reserved for the court and limiting its transparency - as well as restricting the possibilities of posting bail by the suspect/accused. Only because of this law Bartosz had to remain in detention until the court of second instance ruled on the prosecution's appeal. These changes in the law are also emblematic of PiS's general reform of the law enforcement and justice system. They are directed towards expanding the powers of the prosecution at the expense of the courts, as well as strengthening it in relation to the suspect/accused, as e.g. the suspect is sworn to secrecy while the prosecution can disclose any investigation details it sees fit whenever it suits their political agenda, invoking a vague definition of so-called public interest.

- Considering the investigation has been ongoing since 2017 and Bartosz has been present every time he was summoned by the court in every other legal proceeding, including other investigations concerning him or against him, his company and ODF, there was completely no reason for the detention and arrest. To the best knowledge of the defence, no important new findings have been made and the charges concern actions which allegedly took place 5-9 years prior, so there was no rationale warranting the most serious restrictive measure. There has been no instance of illegal interference with the investigation (e.g. by influencing the witnesses - over 100 hundred people have already been interrogated) either. The standard procedure would have been to just summon the person to in order for the charges to be presented (although, according to the defence attorney, from the legal point of view it is

difficult to justify why the charges and application for the pre-trial detention were brought at that time).

- The use of public resources was clearly disproportionate and unjustified - there were no rational or operational reasons to involve five high-level officers of the ABW (who rented a room next to Bartosz's just in order to arrest him in the morning). None of the charges relate to state security and the prosecution did not explain how a small enterprise would be threatening to it.

- The court was given 35 minutes to get to know the case, which was supposedly contained in 40 volumes of files, before ruling on the detention. This was extended by 2h only to permit the defence attorney to reach the remote Lublin court in time from Warsaw, but the court did not have a chance to read the files in this period, as they had to simultaneously be read by another defence attorney already present at the scene.

- As it was revealed in the prosecution's documentation, the money laundering charge was based only on the accusation of Bartosz Kramek's company having issued VAT invoices for services which were allegedly not properly rendered, hence making them "false declarations" and the further use ("legalisation") of funds received as payment for them automatically becoming "money laundering". There are no charges of actual ("serious") money laundering, as the supposedly laundered funds were all used up by the company's and foundation's (of which the company was an important donor) running costs.

- Contrary to the prosecutor's claims, no funds have been "hidden" or dispersed to conceal their origin; it is difficult to imagine how it could be done by supporting ODF as a well-known NGO, dealing with politically sensitive matters and being an object of interest for the media as well as, in all likelihood, various intelligence and security services in Poland and abroad. ODF's donors lists and financial reports are published on its website.

- The alleged crime seems to be damageless, with the state even being its beneficiary, as - if the charges are to be believed - invoices were issued by Bartosz Kramek's company for services not actually rendered, but with all transactions registered and due taxes being paid. Furthermore, fiscal controls initiated in 2017 have not been finalised yet, being prolonged already over 10 times. Only once completed, lengthy administrative court proceedings are expected, making it then possible to respond to any potential findings. No private party has been damaged either. Also, there were no proceedings, nor accusations towards the company or foundation before the publication of Bartosz's Facebook [post on civil disobedience](#) in July 2017.

- One of the main threads explored in the investigation previously were the accusations based on a so-called report by a special Moldovan parliamentary committee, created on the personal order of former de-facto ruler of the country, Vladimir Plahotniuc. Plahotniuc fled the country after losing power to the pro-EU opposition which had been supported by ODF at the European level in its prodemocratic efforts. The accusations were since then [discarded by the country's Prosecutor General](#) as politically motivated.

- Prosecutor Marcin Kołodziejczyk, on whose orders Bartosz Kramek was detained, is a typical example of a PiS political nominee. Due to his promotions and awards in recent years, he was included in the list of 'Kings of life' in Ziobro's prosecution [in a 2019 report of the Lex](#)

[Super Omnia association](#). His superior, regional prosecutor Jerzy Ziarkiewicz, who supervises the proceedings, is also Ziobro's trusted associate. He is a member of the special team investigating Roman Giertych, having a parallel post in the National Prosecution Office. He supervised the investigations into the so-called hate affair in the Ministry of Justice and brought bogus charges against Jakub Karnowski, the former president of the Polish State Railways (PKP) for allegedly acting to the detriment of the company. A portrait of Lech Kaczyński adorning his office serves as a symbol of his loyalties. Although the appropriate local jurisdiction for the foundation and company would be the prosecutor's office and courts in Warsaw, the case was referred to Lublin. It is already the third prosecutor's office in the country which conducts this investigation - after the Warsaw district and regional ones.

- At every step of the proceedings, state and pro-government media have been receiving ample information on the case from the prosecution and ABW (spokesperson S. Żaryn), clearly pointing to an orchestrated propaganda campaign, possibly designed to cover ongoing topics damaging to the PiS party (e.g. minister Dworczyk's email leaks).

- The arrest coincided both with the first hearings in the 20 lawsuits filed by ODF against the PiS party leadership and propaganda journalists, as well as with the planned launch of ODF's two latest campaigns harmful to the ruling party, the "[Hall of Shame](#)" platform and the joint "[Appeal against the brutality and impunity of police in Poland](#)".

- The travel ban issued against Bartosz Kramek seems especially malicious, considering his wife's continuing, unlawful Polish entry ban, with the forced separation potentially amounting to a violation of several EU laws and international treaties providing the right to family life, such as Art. 7 and 33 of the EU Charter of Fundamental Rights, Art. 8 of the European Convention on Human Rights and Directive 2005/38/EC.

- One theory, suggested by multiple sources, argues that Polish authorities might have struck a deal with their Kazakhstani counterparts, as just two weeks prior to the arrest, three Polish activists were released by Belarus following an intervention by Kazakhstani first president Nursultan Nazarbayev. It was revealed as part of an email leak that PM Morawiecki sees the difficult situation in Belarus as "[political gold](#)", hence it wouldn't be far fetched for him to take steps against ODF - the leading international NGO fighting for human rights in Kazakhstan - in exchange for the dictator delivering a PR win to the Polish government.