

Written Statement to the U.N. Human Rights Committee 133th Session (11 Oct 2021 - 05 Nov 2021)

Freedom of expression under threat in Ukraine: the case of Anatoliy Sharij

A submission by Coordination des Associations et des Particuliers pour la Liberté de Conscience with Human Rights Without Frontiers

Recently, **Anatoliy Sharij**, a Ukrainian blogger living in EU countries for almost a decade, was accused by the Security Service of Ukraine (SSU) on “High Treason” under the controversial [Article 111 of the Criminal Code of Ukraine](https://bit.ly/3CXMvaR) (<https://bit.ly/3CXMvaR>). This article states that *‘an act willfully committed by a citizen of Ukraine in the detriment of sovereignty, territorial integrity and inviolability, defense capability, and state, economic or information security of Ukraine: joining the enemy at the time of martial law or armed conflict, espionage, assistance in subversive activities against Ukraine provided to a foreign state, a foreign organization or their representatives, shall be punishable by imprisonment for a term of ten to fifteen years.’*

Sharij is also accused of committing *‘willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity’* under [Article 161, Part 1, of the Criminal Code](https://bit.ly/3upkwxT) (<https://bit.ly/3upkwxT>) which provides for a prison term of five years. Kyiv would like to have him extradited. If so, he would spend many years behind bars for using his freedom of thought and expression.

Sharij began to engage in journalism in early 2005. From 2008 to early 2012 he was the head of the Investigation Department of the website *Obozrevatel*, a publication of socio-political orientation.

Background

Since he became a blogger, Sharij has criticized the successive presidents and governments of Ukraine but also members of the Verkhovna Rada, civil servants, oligarchs, neo-Nazi networks and mafia rings. Corruption and mismanagement of foreign funding are two major issues he has exposed on his video-blog and his YouTube channel.

Official Ukrainian sources and nationalist activists portray him as being pro-Kremlin, pro-Putin, pro-Russia, which he denies:

“As a Ukrainian citizen my position is that Crimea is part of Ukraine. I have the same opinion concerning the whole of Donbas but I disagree with our government about its diagnosis of the situation there and its policies,” Anatoliy Sharij told in an interview with Human Rights Without Frontiers in early September 2021

The accusations of being anti-Ukrainian, pro-Russian, pro-Putin are quite common in a polarized country like Ukraine where since the murder of Gongadze in 2000 a number of other journalists and bloggers have been assassinated, attacked or imprisoned. [Kharkiv Human Rights Protection Group \(https://khpg.org/en/1608022256\)](https://khpg.org/en/1608022256), [the Committee to Protect Journalists \(https://bit.ly/3BaGtDD\)](https://bit.ly/3BaGtDD), [Reporter Without Borders \(https://bit.ly/3zT4gpR\)](https://bit.ly/3zT4gpR) and other NGOs have widely reported on these issues.

Since 2014, Sharij has been running a blog which has 2.5 million subscribers and 4 billion views. Among his followers, 50% are from Ukraine, 30% from Russia and the rest from Russian-speaking people all over the world.

For years, the success of his blog in Ukraine has been disturbing all those who rule or want to rule the country. After Presidents Yanukovich and Poroshenko, it is now the turn of President Zelensky. When *Human Rights Without Frontiers* met him in early September, he said, “I believed in Zelensky and I supported his candidacy during the last presidential campaign because I had been very disappointed by Poroshenko but now I have multiple reasons to criticize President Zelensky as he is not respecting his electoral promises.”

As it could be expected, Sharij got all sorts of threats, including physical ones by neo-Nazis. In the summer of 2011, an unidentified aggressor shot in his car but fortunately he was not hurt. The Ukrainian Ministry of the Interior easily concluded that he had staged this attempt on his life, which Sharij vehemently denies. The car shooting incident was cited as an example of attacks on journalists in Ukraine in the [Human Rights Watch](https://bit.ly/2ZzgY0z) report for the year 2011 (<https://bit.ly/2ZzgY0z>).

Sharij under threat of being deported from the EU to Ukraine

In 2012, under the administration of Yanukovich, Sharij fled to Lithuania because he feared for his life and he got political asylum in that EU country. This status is rarely challenged once it is granted but in 2015, the main Lithuanian news website in English, [Delfi \(https://www.delfi.lt/en\)](https://www.delfi.lt/en), titled one of its news “Anatoli Sharij, a favorite friend of Putin.” Sharij says that he sued Delfi about this and that the media outlet was not able to provide any evidence

of its assertions. Some time later, the Immigration Department was requested to reconsider the blogger's status but concluded there was no objective reason to start such a procedure. Later on, there were a few more attempts to have his status reviewed but the Immigration Center stuck to its first decision.

In the meantime, the blogger decided to look for a safe haven in another EU country. In 2015, he left Lithuania where he had started to receive again lots of threats for allegedly being a friend of Putin. During his interview with *Human Rights Without Frontiers* in Spain, his new host country, he strongly denied such an unfounded relationship as pure propaganda meant to discredit him and silence him.

Last but not least, four days after President Gitanas Nausėda of Lithuania paid an official visit to Ukraine on 18-19 March 2021, the Ukrainian blogger received a letter from the Lithuanian Department of Migration in which he was asked if there were any real threats against him in Ukraine. It is not known if that new move of the Department of Migration was related to the meeting of the two presidents but Sharij answered with a detailed and documented list of a series of incidents and threats he had been the target of.

On 14 April 2021, less than a month after the meeting between President Zelensky and President Nausėda, the blogger received another letter from the Immigration Department saying that he was deprived of his residence permit in Lithuania. Two days later, on 16 April, he received another letter informing him that a procedure for "withdrawing his refugee status" had been initiated. No reason was given to the withdrawal of his refugee status.

In early June 2021, some Lithuanian media - the daily *Lietuvos Rytas* and [Delfi](https://bit.ly/39PZgI7) (<https://bit.ly/39PZgI7>) - announced that Sharij had been stripped of his political asylum status.

Sharij threatened by Ukrainian neo-Nazis in Ukraine, Lithuania and Spain

Sharij has dedicated his professional career to denouncing organized crime and political corruption in his country. In particular, the neo-Nazi group "National Corps," a paramilitary armed political party that worships Nazi ideals.

The National Corps, also known as the National Corps Party, and previously called the Patriots of Ukraine, is a far-right political party founded in 2016 by members of the "Azov Civil Corps" and Azov Battalion veterans. It is currently led by Andriy Biletsky, a former member of the Ukrainian Parliament from 2014 to 2019.

Sharij has been particularly targeted by this neo-Nazi group.

The National Corps created an ISIS-style propaganda video showing him as a prisoner about to be beheaded like the 21 Egyptian Copts in Libya in 2015.

During their demonstrations in Kyiv, those neo-Nazi militants regularly show banners with a rope to hang him or with his head in a bloody jar.

A coffin with his name on it was also laid down by National Corps militants outside his office in Kyiv as the [Spanish](https://bit.ly/3Fg8o7u) newspaper *Diario 16* (<https://bit.ly/3Fg8o7u>) and [German](https://bit.ly/3ov2Uj6) media (<https://bit.ly/3ov2Uj6>) reported with unambiguous pictures illustrating their articles about neo-Nazi groups threatening him and his family in Spain.

His fight against Nazism

Many people in Ukraine want the death of Sharij because he disturbs the political and business establishment.

On 14 May 2018, [Kyiv Post](https://bit.ly/3kXGhBX) (<https://bit.ly/3kXGhBX>) praised him for revealing that Ukraine's Consul General in Hamburg Vasyl Marushchynets was a fascist after he wrote in Facebook "It's honorable to be a fascist."

And [Kyiv Post](https://bit.ly/3kXGhBX) added: "Blogger Anatoliy Shariy was the first to bring Marushchynets' alleged posts to public attention, via a YouTube video published on May 12. The media and the internet users also shared a photo of a person who looks like Marushchynets holding a cake with the words '60 Mein Kampf,' a reference to the book by Nazi dictator Adolf Hitler."

The Ukrainian diplomat was first suspended and then dismissed. But in 2019, a Kyiv court decision ruled that the termination of his diplomatic mission was illegal and the foreign minister was forced to reinstate the ex-consul fired over his fascist and anti-Semitic remarks made while serving in his post. This ruling angered the [Jewish media](https://bit.ly/3uyflf5) (<https://bit.ly/3uyflf5>) and shed additional shadows on the Ukrainian judiciary which is known to be marred by corruption.

In danger in Spain

Sharij's investigative journalistic work is disseminated through his website and social media. Although he is now living in the EU, he continues to have a major impact on Ukrainian society and voters. He claims to have 2.5 million subscribers and 4 billion views. Among his followers, 50% are from Ukraine, 30% from Russia and the rest from Russian-speaking people all over the world.

According to a study conducted by the company Brand Analytics, he has the highest penetration in Ukraine. Because of his popularity, he remains a major target of the Ukrainian neo-Nazis, even in Spain.

Despite his prudence, Sharij's hideout in Spain where he lives with his wife and their 18-month old son has been identified by Ukrainian neo-Nazis.

The tentacles of the National Corps reached him Spain in October 2019 when a former soldier of the Azov Battalion, [Alexander Zolotukhin](https://bit.ly/2XZNSQU) (<https://bit.ly/2XZNSQU>) published a post on internet with the address of Sharij's house, a picture of it and of his wife's car. This fugitive had fled from Ukraine to avoid being prosecuted for his participation in the kidnapping and beating of a journalist, Vladislav Bovtruk, in 2016. The main and sole culprit to be prosecuted in this incident, [an army chaplain](https://bit.ly/2XZNSQU) (<https://bit.ly/2XZNSQU>) was sentenced to seven years in prison on ... 31 August 2021.

After the disclosure of Sharij's place of living, dozens of Nazi militants have demonstrated outside his house and death threats have come back. The Ukrainian couple has requested the protection of the Spanish police.

Controversial law on sanctions imposed on Anatoliy Sharij and his wife by Ukraine

On 20 August 2021, the National Security and Defense Council of Ukraine (NSDC) imposed sanctions against Anatoliy Sharij and his wife. This was announced by the secretary of the NSDC, Oleksiy Danilov.

Sharij declared to *Human Rights Without Frontiers* that he was then not officially informed about this decision and it is by chance that he came across the news on 112 Ukraine TV Channel.

On 16 February, Sharij was accused of state treason and summoned to an interrogation by the Security Service of Ukraine (SSU) on 22 February.

Human Rights Without Frontiers had access to the notice of charges in which he is said to be suspected of

“High treason, i.e. an act intentionally committed by a citizen of Ukraine to the detriment of the sovereignty, territorial integrity and inviolability of information security of Ukraine, namely: providing assistance to a foreign state, foreign organization and their representatives in conducting subversive activities against Ukraine, i.e. committing a criminal offence under Part 1 of Article 111 of the Criminal Code of Ukraine;

Incitement of national enmity and hatred, humiliation of national honor and dignity, i.e. a criminal offence under Part 1 of Article 161 of the Criminal Code of Ukraine.”

Sharij strongly denies having ever had such criminal activities.

As he lives in Spain and feared to be arrested, he did not show up and the SSU put him on the Wanted List of fugitives.

Crackdown on media in Ukraine under “state treason” accusations

On 2 February, President Zelenskyy signed a decree on the imposition of sanctions against 112 Ukraine, NewsOne and ZIK TV channels for allegedly being pro-Russia.

By this decree, he enforced the decision of the National Security and Defense Council on sanctions regarding the cancellation of their broadcasting licenses. They will be active for five years.

Hundreds of journalists and employees are said to have lost their job with this ban. At the end of August, they appealed

- to the UN High Commissioner for Human Rights (<https://bit.ly/39RuyhP>)
- to U.S. President Joseph Biden
- and to the President of the European Council, Charles Michel.

They also demonstrated at various strategic places in Kyiv, including [near the US Embassy](https://bit.ly/3120nuV) (<https://bit.ly/3120nuV>).

At the end of September, they also addressed their complaint to the Parliamentary Assembly of the Council of Europe (<https://bit.ly/3AX2426>) and to its president, Rick Dams (<https://bit.ly/2Y1GjQf>).

Sanctions as an instrument of the Ukrainian government against Sharij and others

Sanctions have become a hot topic in Ukraine. Indeed, since the beginning of 2021, Ukraine has applied a record number of new sanctions against foreign and Ukrainian companies and citizens, as well as other countries. This policy has provoked a lot of discussions about the role of these restrictive measures targeting a wide range of actors.

The Law of Ukraine “On Sanctions” has been in force since August 2014. It was adopted out of a need to face threats to Ukraine’s national security in the context of the Russian annexation of Crimea and the conflict in Donbas.

The grounds for sanctions are the actions creating real or potential threats to national interests, national security, sovereignty and territorial integrity of Ukraine or promoting terrorist activities and/or violating human or civil rights and freedoms, public and national interests. For instance, sanctions can be applied for supporting the annexation of Crimea, the occupation of Donbas; cyberattacks on critical infrastructure; information threats, including propaganda of separatist sentiments in the territory of Ukraine; support of economic (business) relations in the temporarily occupied territory of Ukraine, etc.

Shariy does not recognize any of these activities as having been his in the framework of his journalistic work. For example, he has always said that Crimea and the whole of Donbas are parts of Ukraine.

The Law contains 24 types of sanctions, including blocking assets, restricting trade operations, stopping the transit of resources, flights and transportation through Ukraine, preventing movement of capital outside Ukraine, suspending of economic and financial obligations, revoking or suspending of licenses and other permits, etc.

In Shariy’s case, “the presumption of innocence has not been respected and the following sanctions have been quickly taken in total disregard of the existing legal procedures,” he told *Human Rights Without Frontiers*.

Decisions to impose sanctions are made by a special coordinating body under the President of Ukraine – the National Security and Defense Council of Ukraine (NSDC) on the basis of proposals of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers, the National Bank of Ukraine and the Security Service of Ukraine.

Decisions of the National Security and Defense Council are enforced by a decree of the President of Ukraine and are binding.

Noteworthy is that a Ukrainian [law firm](https://bit.ly/39YmbAV) (<https://bit.ly/39YmbAV>) unrelated to Shariy’s case, has analyzed and criticized major points of the Law regulating the sanctions as an instrument that the government can misuse to silence opposition parties, media and journalists.

Reaction of the OSCE

Last but not least, the OSCE Representative on Freedom of the Media Teresa Ribeiro issued a press release (<https://bit.ly/2ZB1WaE>) on 25 August in which she expressed her concerns regarding Ukraine's practice of applying sanctions that negatively affect the work of media outlets and journalists.

“While Ukraine has a legitimate right to protect its national security, the authorities should find a balanced and proportional solution in addressing media related concerns, a solution that preserves media pluralism, free flow of information and diversity of opinions in line with relevant international standards and OSCE commitments,” Ribeiro said. *“Media freedom is dependent on a healthy, vibrant and competitive landscape, which includes voices that provide a variety of news. Any sanctions on media should be subject to careful scrutiny, accompanied by effective procedural safeguards to prevent undue interference.”*

And she pointed the Ukrainian authorities to her Communiqué “On the right of the media to freely collect, report and disseminate information, news and opinions, regardless of frontiers,” (<https://bit.ly/3zQbxXG>) published in May 2021, in which she recommended OSCE participating States to “promote more debate and an open, diverse and dynamic media environment, also on issues that they deem ‘foreign’ or ‘not correct’.”

The International Federation of Journalists also condemned the sanctions imposed on several media outlets and journalists in Ukraine (<https://bit.ly/3zXN3eW>).

Recommendations

CAP/ Conscience et Liberté and *Human Rights Without Frontiers* recommend that the Ukrainian authorities

- abide by their commitment to respect freedom of opinion and expression which is protected by the U.N. Universal Declaration of Human Rights;
- put their legislation related to the freedom of the media, journalists and bloggers in line with the international standards;
- take the report of *CAP/ Conscience et Liberté* and *Human Rights Without Frontiers* about the situation of Anatoliy Sharij and his family into consideration;
- drop the charges related to his freedom of thought, opinion and expression;

- lift the sanctions against him and his family related to his journalistic activities.