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Human rights situations that require the Council's attention

Written statement* submitted by Coordination des Associations et des Particuliers pour la Liberté de Conscience, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



Freedom of expression and the media muzzled in Ukraine: the case of Anatolij Sharij

CAP Conscience de Liberté is deeply concerned about the deterioration of freedom of thought and expression in Ukraine which has been monitored for years by the Brussels-based NGO, Human Rights Without Frontiers.

Media outlets, journalists and bloggers are being prosecuted and sanctioned for merely exercising their right to freely comment on and criticize the Government's and President Zelensky's governance.

Serious but controversial charges of "High Treason" have been brought against a number of them to stifle their voices. Several online media outlets have been banned and silenced. Article 111 of the Criminal Code of Ukraine(1) has been misused to this end.

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.'

Anatolij Sharij, a well-known blogger living now in Spain for his safety, is accused of breaching Article 111 but also 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(2). The first indictment provides for a prison term of 10 to 15 years in prison and the second one to 5 years. Kyiv wants to have him extradited by Spain where he has a safe haven. If so, he would spend many years behind bars for using his freedom of thought and expression.

Sharij strongly denies having ever had such criminal activities.

Video-blogger Sharij asserts that his blog which has 2.5 million subscribers and 4 billion views. Among his followers, 50% are from Ukraine, 30% from the Russian Federation and the rest from Russian-speaking people all over the world. Since he became a blogger, he 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 investigated.

Sharij is misportrayed by the authorities as a journalist being pro-Kremlin, pro-Putin, pro-Russian Federation. However, this sort of accusation is 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, beaten or imprisoned. Kharkiv Human Rights Protection Group(3), the Committee to Protect Journalists(4), Reporter Without Borders(5) and other NGOs have widely reported on these issues.

"As a Ukrainian citizen my position is that Crimea is part of Ukraine," Sharij said at a press conference on 20 October 2021 at the Press Club in Brussels, adding that he had the same opinion concerning the whole of Donbas but disagreed with President Zelensky's diagnosis of the situation there and his policies.

On 20 August 2021, the National Security and Defense Council of Ukraine (NSDC) imposed sanctions on him and his wife.

SANCTIONS AS AN INSTRUMENT OF THE UKRAINIAN GOVERNMENT

Sanctions have become a hot topic in Ukraine as they have been imposed on a number of prominent personalities.

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 Federation annexation to the Autonomous Republic 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 the Autonomous Republic 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.

Sharij denies having carried out any activity threatening Ukraine's national interests, security and sovereignty in the framework of his journalistic work.

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 Sharij's case, the presumption of innocence has not been respected and sanctions have been quickly taken in total disregard of the existing legal procedures.

REACTION OF THE OSCE

Last but not least, the OSCE Representative on Freedom of the Media Teresa Ribeiro issued a press release⁽⁶⁾ on 25 August 2021 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,"⁽⁷⁾ 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⁽⁸⁾ also condemned the sanctions imposed on several media outlets and journalists.

RECOMMENDATIONS

CAP Liberté de Conscience 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 this statement of CAP Liberté de Conscience and Human Rights Without Frontiers about the situation of Anatoliy Sharij and his family into consideration;

drop the charges related to Sharij's freedom of thought, opinion and expression;

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

Human Rights Without Frontiers, NGO(s) without consultative status, also share the views expressed in this statement.

- (1) <https://www.legislationline.org/documents/action/popup/id/16257/preview>
- (2) <https://www.legislationline.org/documents/action/popup/id/16257/preview>
- (3) <https://khp.org/en/1608022256>
- (4) https://cpj.org/data/killed/europe/ukraine/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc_fips%5B%5D=UP&start_year=1992&end_year=2021&group_by=location
- (5) <https://rsf.org/en/news/harassment-ukrainian-tv-journalists>
- (6) <https://www.osce.org/representative-on-freedom-of-media/496339>
- (7) <https://www.osce.org/files/f/documents/0/b/485186.pdf>
- (8) <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/ukraine-president-bans-opposition-media-stranaua-and-sanctions-editor-in-chief.html>