

Human Right to Access Public Information: The Experience of Ukraine and the Practice of the ECtHR

Oleksandr Mykhailovych Shevchuk¹, Oleksandr Mykhailovych Drozdov², Vadim Anatoliyovych Kozak³, Anastasiia Oleksandrivna Vyltsan⁴, Olena Volodymyrivna Verhogyad-Gerasymenko⁵

¹ Department of Administrative Law and Administrative Activities, Yaroslav Mudryi National Law University, Ukraine. E-mail: oleksandr-shevchuk@ukr.net

² Department of Criminal Process, Yaroslav Mudryi National Law University, Ukraine. E-mail: drozdov.am15521978@gmail.com

³ Department of Criminal Law, Yaroslav Mudryi National Law University, Ukraine. E-mail: vadim_Kozak1552@ukr.net

⁴ Department of Criminal Process, Yaroslav Mudryi National Law University, Ukraine. E-mail: nastya155216011994@gmail.com

⁵ Department of Criminal Justice, Yaroslav Mudryi National Law University, Ukraine. E-mail: o.v.verhogyad-gerasymenko1552@gmail.com

Abstract: The guarantee of ensuring the right to access public information is an important condition and criterion for functioning in a legal democratic state. In addition, realizing the right to access public information is essential for preventing and detecting corruption. The purpose of this work is to analyze international legal rules and standards, as well as to provide some examples of the practice of the European Court of Human Rights in the context of the implementation of the right to access public information. It has been established that the right to access public information is a component of the human right to information and is a fundamental constitutional human right. The existing practice of the European Court of Human Rights confirms the importance of protecting the right of access to public information. It indicates to states that it is mandatory to comply with it, the expediency of applying an effective system of control measures to implement the right under study. The paper analyzes theoretical and legal approaches to understanding the human right to access public information and determines its place in human rights. An analysis of the practice of the European Court of Human Rights regarding the right to access public information made it possible to identify existing shortcomings in the legislation of the Member States and Ukraine and to find ways and methods for solving such problems and prospects for preventing such violations in the future, as well as the possibility of applying the decisions of the European Court of Human Rights to improve the current domestic legislation in this area.

Keywords: Human Rights; Public Information; International Law; Legal Norms; Legal Regulation

1. Introduction

In Ukraine, in countries around the world, there remains an urgent problem of legal support for the protection of human rights to access to public information as the most important humanistic value and as an integral element of democracy. According to the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Ukraine and the EU have committed themselves to ensuring the gradual adaptation of

Ukrainian legislation to the EU *acquis* in accordance with the directions defined in this Agreement, including in the field of access to information, and ensure its effective implementation. In particular, in 2015, more than 50% of the world's countries have already introduced provisions on access to public documents and information both at the constitutional level and in special laws. Ukraine only in May 2020 ratified the Council of Europe Convention on Access to Official Documents, which obliges Ukraine to guarantee the right of everyone (and not just a citizen) to access information, introduces both a national and an international monitoring mechanism in the field of access to public information, and possible restrictions on access to official documents.¹

The right of access to official documents is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights. The direct system of legal decisions applied by the European Court of Human Rights explains the approaches and model of its operation². The European Court of Human Rights uses various legal sources to support its decisions systematically and consistently, which is necessary to enhance the clarity and predictability of its judgments³. The realization of a person's right to access to public information depends on the scope of rights and freedoms that determine his social opportunities, the nature of his life, the system of people's relations in society and the state. The degree of development of this right characterizes the degree of progress of society itself, the level of personal freedom of the individual, which is actually provided by the state⁴.

In some cases, there may be certain restrictions on human rights regarding the exercise of the right to access public information, for example, under martial law⁵. In addition, the actual problem of legal regulation in the context of the implementation of the human right to access to public information is that the norms aimed at regulating relations in this area are contained in various regulations, are not systematized and codified. Some norms are declarative in nature and are not implemented in the process of law enforcement. This means that in order to protect the human right to access public information, it is necessary to improve approaches to the implementation of this right and develop effective legal mechanisms in Ukraine, taking into account the practice of reviewing court decisions of the ECtHR, which indicates the relevance of this work.

Some authors have already studied the issues of access to information as a human right.

¹ Riekkinen, Mariya, and Markku Suksi *Access to information and documents as a human right. Turku/Åbo: Åbo Akademi University, Institute for Human Rights, 2015.* <https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf>

² Longer-Term Future of the System of the European Convention on Human Rights. Report of the Steering Committee for Human Rights. Council of Europe. <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/echr-system/future-of-convention-system>

³ Gerards, Janneke. "Margin of appreciation and incrementalism in the case law of the European Court of Human Rights." *Human rights law review* 18, no. 3 (2018): 495-515.

⁴ Tsybul'ska, A. "The right to access information in Ukraine: constitutional and legal aspect". *Bulletin of the Alfred Nobel Dnipropetrovsk University. Series "Legal Sciences*, 5 no. 2(2013): 49-54.

⁵ Vilchuk, Tetyana. "Advocacy of Ukraine in the period of martial law and restoration after the war: problems of legal regulation of the organization and activities." *Revista Jurídica Portuguesa* (2022): 254-273.

Riegner,⁶ explored the issues of access to information as a human right and a constitutional guarantee; Mendel,⁷ studied some legal issues regarding freedom of information as an internationally protected human right; Christoffersen, J. Jukka Viljanen,⁸ drew attention to the activities of the European Court of Human Rights as a developer of general doctrines of human rights law, Laurence R. Helfer,⁹ integration as a deep structural principle of the European human rights regime in the reconstruction of the European Court of Human Rights; Kaplina, O, and Tumanyants A,¹⁰ studied the decisions of the European Court of Human Rights that influenced the criminal process in Ukraine and others. Recently, the development and research in scientific sources of such human rights as the human right to virtual¹¹, the human right to security¹², the human right to Internet access¹³, the human right to innovation¹⁴, the rights of the patient to receive information in the concept of "health and human rights"¹⁵, international standards of the right to information, features of the institutional framework of the right to information in certain jurisdictions¹⁶, problems of application of the Law of Ukraine on access to public information.¹⁷ However, the issues of

⁶ Riegner, Michael. "Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective. *Verfassung Und Recht in Übersee*". *Law and Politics in Africa, Asia and Latin America*, 50 no 4 (2017): 332–366. <https://www.jstor.org/stable/26540817>

⁷ Mendel, Toby. "Freedom of Information as an Internationally Protected Human Rights". *Comparative Media Law Journal*, 1, no 1. (2003). <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>

⁸ Viljanen, Jukka. *The European Court of Human Rights as a Developer of the General Doctrines of Human Rights Law. A Study of the Limitations Clauses of the European Convention on Human Rights*. Tampere University Press, 2003.

⁹ Helfer, Laurence R. "Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European human rights regime." *European Journal of International Law* 19, no. 1 (2008): 125-159.

¹⁰ Kaplina, Oksana, and Anush Tumanyants. "ECtHR Decisions That Influenced the Criminal Procedure of Ukraine" *Access to Justice in Eastern Europe*, 1, no.9, (2021):102–121. DOI: 10.33327/AJEE-18-4.1-a000048

¹¹ Shevchuk, Oleksandr, Oleg Bululukov, Oleksandr Lysodyed, Valentyna Mamonova, and Yurii Matat. "Human right to virtual reality in the healthcare: legal issues and enforcement problems". *Juridical Tribune - Tribuna Juridica*, 11, Special Issue, (2021): 302 -315.

¹² Shevchuk, Oleksandr, Nataliya Matyukhina, Oleksandra Babaieva, Anatoliy Dudnikov, and Olena Volianska. "The human right to security in the implementation of the concept of the" right to health protection". *Juridical Tribune Journal, Tribuna Juridica* 11, no. 3 (2021): 535-548.

¹³ Shevchuk, Oleksandr, Valentyna Zui, Ivanna Maryniv, Svitlana Davydenko, and Sergii Mokhonchuk. "Human Right to Internet Access in Healthcare in the "Right to Health Concept": Legal Issues." *European Journal of sustainable development* 10, no. 2 (2021): 286-286.

¹⁴ Shevchuk, Oleksandr, Oleksandr Lysodyed, Igor Borysenko, Oleg Bululukov, and Oleksandra Babaieva. "Legal support of the patient's right to innovation in health." *European journal of sustainable development* 9, no. 4 (2020): 337-337.

¹⁵ Shevchuk, Oleksandr, Mykola Kucheryavenko, Svitlana Davydenko, and Oleksandra Babaieva. "Implementation of the patient's right to obtain information in the concept "health and human rights". *Amazonia Investiga* 9, no. 29 (2020): 288-296.

¹⁶ Udombana, Ngozi J., and Kafayat Motilewa Quadri. "Institutional Framework on the Right to Information in Selected Jurisdictions." *Beijing L. Rev.* 11 (2020): 244-261.

¹⁷ Rastorhuiev, Oleksandr, Petro Makushev, Alla Pukhtetska, Andriy Hridochkin, and Irina Smaznova. "Protection of Human Rights and Freedoms in the Administrative Proceedings of the European Union." *Hasanuddin Law Review* 7, no. 3 (2021): 210-225. DOI: <http://dx.doi.org/10.20956/halrev.v7i3.3215>.

integration of the practice of the European Court of Human Rights regarding the problems of exercising the right to access to public information do not lose their relevance, since the problems of protecting human rights and freedoms in the context of European integration processes in Ukraine require improvement both in form and content.

2. Method

In this work, the authors used a system of methods of the philosophical, general scientific and special-scientific level. Methods of analysis and synthesis were used to clarify the concept of "the right to access to public information", their features and forms, content. The inductive method made it possible to highlight the systemic shortcomings of legal regulation in the implementation of the human right to access to public information. The main method of work was formal-legal. The formal legal method provided us with an opportunity to carry out an effective analysis of the legal framework of international law, as well as the national legislation of Ukraine on the problems of exercising the right to access to public information in the practice of the European Court of Human Rights. The use of the synthesis method made it possible to determine the directions for improving legal regulation in the context of the implementation of the human right to access to public information, taking into account the practice of the European Court of Human Rights.

3. The Right to Access Public Information in the Concept of Human Rights: Theoretical and Legal Foundations

The concept of human rights is in constant development, depending on the degree of development of society and the state. Until now, in the legal literature there is no common understanding of the difference between such categories as "the right to public information", "the right to information", "the right to access one's personal data" and "the right to appeal", there is also no distinction between the content of legal structures "the right to information" and "the right to access information". Thus, public information in the norms of the Law of Ukraine "On Access to Public Information" means information reflected and documented by any means and on any media, received or created in the process of fulfillment by subjects of power of their duties under the current legislation, or being in the possession of subjects of power authorities, and other managers of public information determined by this Law.¹⁸

The Constitution of Ukraine recognizes the right to freedom of thought and speech, free expression of one's views and beliefs, noting that everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way - at their choice.¹⁹ It is necessary to distinguish between the following methods of access to public information - active and passive, in fact, there is a balance between the

¹⁸ About access to public information: Law of Ukraine dated 13.01.2011 No. 2939-VI. <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

¹⁹ Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

obligation of public authorities to publish a list of information defined by law and the right of a person to have access to all public information that is open according to the access regime or should be open in accordance with by law. In the absence of the above signs, the information is not considered public.

Note that access to public information has a dual nature. On the one hand, ensuring the right to access to public information is the responsibility of the subjects of power and other managers of public information. On the other hand, the realization of the right to access to public information is the right of every person. We should agree with the opinion of those authors that the right to access information, provides for the possibility of free receipt of information, consists of separate powers for access to specific types of information (public, mass, personal data, etc.). Thus, the right to information and the right to access information are related as a whole and a part.

A debatable issue is also in scientific legal circles, the inclusion in the category of "right to information" such a right as the "right to protection". We should agree with the point of view of scientists that the "right to protection" is an independent category of legal science, covering all possible legal means aimed at protecting the rights and freedoms of citizen, including in the information sphere.²⁰ There are also different scientific approaches to the interpretation of the category "right to information". Within the framework of the first "narrow approach", the right to information is presented only as the right to receive (access) to information, that is, as a relative right. In turn, a broad approach in the scientific legal literature involves attributing to the right to information all types of subjective rights aimed at information or the implementation of actions with it. Thus, some researchers point out that the right to access to information acts as an organic component of the general right to information, its specific aspect.

According to Marushchak,²¹ the right of citizens to information and information rights are identical, arguing that the universal constitutional right to information includes such specific opportunities that together constitute the so-called information rights of subjects of information relations. The scientist gives the author's definition of the definition of "the right to information" - as a state-guaranteed opportunity for individuals and the state (state bodies) to freely receive, use, distribute and store the information they need to exercise their rights, freedoms and legitimate interests, carry out tasks and functions that do not violate the rights, freedoms and legitimate interests of other citizens; rights and interests of legal entities.

Some authors understand the category of the human right to information as guaranteed and regulated at the national and international legal levels, the ability of everyone, recognized as natural and inalienable, to freely collect, receive, store, use and disseminate information that is in public circulation about any processes and phenomena of objective reality when provided that such actions do not harm the

²⁰ Minaverry, Clara. "The right to participation and the right to access to public information and how they relate to Argentine environmental law for the conservation of biodiversity. A study of cases for the legal protection of native forests and wetlands." *Dikaion* 25, no. 2 (2016): 216-242.

²¹ Marushchak, Anatoly. *Information law of Ukraine*. Kyiv: Dakor, 2011, 66.

information security of society, the state and do not violate the rights, freedoms and legitimate interests of other persons.²² Therefore, the right to information is one of the fundamental human and civil rights. One of its varieties is the right of individual access to public information. For example, Kushnir²³, defines the content of a person's constitutional right to access to public information as a system of needs and interests of a person, enshrined in the norms of the constitution and laws, taking into account international legal standards, regarding the receipt of public information due to its systematic and prompt publication or upon request, as well as the possibility of using it in one's own way discretion. Thus, the human right to access to public information is one of the most important human rights. Access to public information contributes to the openness and accountability of public authorities, and is also important for preventing corruption offenses.

The state acts as a guarantor of the realization of citizens' rights to access to public information. An important aspect in this legal mechanism for the implementation of human rights is also given legal responsibility, which consists in the observance by public authorities and their officials of the legislation guaranteeing citizens the right of access to public information. The category "right to access to public information" should be considered as a set of legal relations provided for at the legislative level the possibility of access to information, and the right to freely collect information, as well as the right to freely receive information, and the right to freely collect information, as well as the right to freely receive information that has a clearly defined regulation procedure, and only in conjunction with other powers to exercise the human right to information.

The right to access public information is guaranteed by such major international documents as the Universal Declaration of Human Rights (Article 19), the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10), the International Covenant on Civil and Political Rights (Article 19), the Recommendation of the Council of Europe No. R(81)19 on access to information held by public authorities, Council of Europe Recommendation No. R(2002) on access to official documents, Convention on access to information, public participation in decision-making and access to justice in matters related to the environment (Aarhus Convention), etc.²⁴

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), which entered into force for Ukraine on October 30, 2001, recognized the right of every person to access environmental information, the right of the public concerned to participate in decision-making and access to justice in environmental matters. The Convention obliges States Parties to adequately, timely and effectively inform the public concerned at the early

²² Yevgeny, Larin. "The constitutional right to information: concept and its essence ". *Scientific Bulletin of the International Humanitarian University. Ser.: Jurisprudence*, 1 no. 1 (2019): 63-67.

²³ Mykhailiuk, Galyna, and Larry A. DiMatteo. "Creating a comprehensive peaceful assembly law for Ukraine: Idea and ideal." *New Perspectives* 29, no. 1 (2021): 45-68.

²⁴ International Covenant on Civil and Political Rights: International document December 16, 1966. No 995_043. https://zakon.rada.gov.ua/laws/show/995_043#Text

stages of decision-making and to ensure “that the relevant decision duly reflects the results of public participation” (Article 6). In case of violation of the right to information or to participate in decision-making, any person has the right to appeal against the decision in court or other impartial body²⁵.

The Council of Europe Convention on Access to Official Documents, which entered into force for Ukraine on December 1, 2020, is the first international document in which states not only recognize the right of access to information, but also agree to ensure such a right and cooperate in the field of access. The Convention does not limit the norms of national legislation and international treaties that recognize a broader right of access to such documents. For example, the request may not state the reason for the request for access to a public document, and the parties to the Convention may grant applicants the right to be anonymous, and it is important that any request for access to a white paper must be dealt with within a reasonable time²⁶.

In accordance with EU rules on public access to documents provided for in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on access to documents of the European Parliament, of the Council and of the Commission,²⁷ members of the public can contact institutions to request access to specific documents (if they are aware of their existence) or ask the institution to identify documents on a specific subject that they wish to access. If an institution denies access citing one of the exceptions under the said Regulation, persons may ask the institution to reconsider its decision (so-called "confirmation statement"). Individuals who seek public access to documents may apply to the European Ombudsman if the institution has rejected their supporting application in whole or in part. They may argue that the above exceptions do not apply or that there is an overriding public interest in the document(s) being disclosed. They may argue that the above exceptions do not apply or that there is an overriding public interest in the document(s) being disclosed. They may also contact the Ombudsman if the institution does not respond to their requests within the appropriate time frame. The Ombudsman strives to deal with such complaints as quickly as possible and there is an accelerated procedure.²⁸

4. The Practice of Making Judicial Decisions of the ECtHR on the Right to Access Public Information

It can be argued that it was the jurisprudence of the ECtHR that formed the modern normative standards of human rights in Europe on the basis of the legal provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Note

²⁵ Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). https://zakon.rada.gov.ua/laws/show/994_015#Text

²⁶ Council of Europe Convention on Access to Official Documents. https://zakon.rada.gov.ua/laws/show/994_001-09#Text

²⁷ Regulation (EC) No. 1049/2001 of the European Parliament and the Council of May 30, 2001 on public access to documents of the European Parliament, the Council and the Commission. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R1049&qid=1639061131667>.

²⁸ The role of the European Ombudsman. Available online at: <https://www.ombudsman.europa.eu/en/our-strategy/home/en>

that, on July 17, 1997, the Verkhovna Rada of Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force for Ukraine on September 11, 1997, after which the citizens of Ukraine received the right to file a complaint about the violation by Ukraine of the rights and freedoms guaranteed by the Convention on protection of human rights and fundamental freedoms, before the ECtHR, after using all domestic remedies.

The right to access public information is not expressly provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms. Such a right has “its origin” under Article 10 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. This article of the Convention proclaims: (1) Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. This article does not prevent states from requiring the licensing of broadcasting, television or cinematographic enterprises; (2) The exercise of these freedoms, insofar as it involves duties and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for public health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of a court.²⁹

As in the case of Article 19 of the International Covenant on Civil and Political Rights³⁰, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not expressly impose an obligation on the governments of member states to disclose official documents that are not publicly available. The first interpretations of this article by the ECHR confirmed this assumption, arguing that the right to information enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides only that the state does not interfere with the right to seek and disseminate public information.

There is a certain practice of making court decisions by the ECtHR on the implementation of the right to access to public information. In particular, *Leander v. Sweden*, judgment of 26 March 1987, *Sdružení Jihočeské Matky v. the Czech Republic*, judgment of 10 July 2006, *Bubon v. Russia*, judgment of February 7, 2017, *Studio Monitori and Others v. Georgia*, decision of January 30, 2020, *Gaskin v. the United Kingdom*, judgment of 7 July 1989, in which the ECtHR promulgated the opinion that by prohibiting the provision of administrative information to a person, the state interferes with the freedom to receive information and ideas, *Magyar Helsinki Bizottság v. Hungary*, Application No. 18030/11, judgment of November 8, 2016, *Roche v. the United Kingdom*, judgment of October 19, 2005 .

²⁹ Convention on the Protection of Human Rights and Fundamental Freedoms: International document dated 04.11.1950 №995_004. https://zakon.rada.gov.ua/laws/show/995_004#Text

³⁰ International Covenant on Civil and Political Rights: International document December 16, 1966. №995_043 https://zakon.rada.gov.ua/laws/show/995_043#Text

Moreover, in *Gillberg v. Sweden*, application no. 41723/06, decision of 3 April 2012 that a civil servant is not protected under Art. 10 of the Convention if he refuses to provide research material in cases where (1) such material belongs to the university, (2) the university is willing to disclose it, and (3) the employee is not required to maintain secrecy regarding research participants. Although the Court did not rule out that the negative right to freedom of expression (the right not to disseminate information) could be protected by Art. 10 of the Convention, in certain circumstances in this case, the Court held that the research material belonged to the university and that the applicant's conclusion was contrary to the property rights of the university, and also affected the rights of outside researchers to access public documents³¹.

In the case *Bucur and Toma v. Romania*, judgment of 8 January 2013, if a civil servant raises concerns about illegal surveillance of the public, provided that the disclosure is made in good faith, the government cannot dismiss the employee and thus violate his freedom of expression according to the ECtHR³². In the case (*Youth Initiative for Human Rights v. Serbia*), judgment of 25 June 2013, the ECtHR held that Serbia violated Article 10 of the ECHR when, at the request of the non-governmental organization Youth Initiative for Human Rights, it refused to provide access to information held by Serbian Intelligence Agency. The ECtHR ruled that the denial of access to information of public interest prevents the organization from fulfilling its role as "public watchdogs"³³.

In *Weber v. Germany*, judgment of 6 January 2015, the applicant complained, essentially under Article 10 ECHR, that the municipal authorities of the city of Wuppertal did not provide him with specific information about payments to political parties, parliamentary groups and political foundations, as well as payments to political parties from holdings owned by the city. In this case, the applicant's aim was to conduct a study on the impact of financial transfers from public institutions to political parties. The field of research in which the applicant is engaged may be considered a matter of general interest. In the case (*Roşianu v. Romania*), judgment of 24 June 2014, the ECtHR held that Romania violated Article 10 ECHR when it denied journalists access to public documents on the use of public funds. There was an interference with the applicant's right to freedom of expression as a journalist³⁴.

In the case, *Társasaga Szabadságjogokért v. Hungary*, judgment of 14 April 2009, the ECtHR held that Hungary had violated Art. 10 ECHR when it denied an NGO access to public documents. The Hungarian Civil Liberties Union asked to have access to a complaint filed with the Constitutional Court by a deputy. The Court notes that the applicant requested information about the constitutional complaint without the personal details of its author. Moreover, the Court finds it implausible that any reference to the private life of a people's deputy, and therefore to a protected private sphere, could be seen from his constitutional complaint. True, he told the press that he

³¹ Case of *Gillberg v. Sweden*. 2010.

³² *Bucur and Toma v. Romania*. *European Court of Human Rights*. 2013. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Bucur%20and%20Toma%22%5D,%22itemid%22:%5B%2202-7395%22%5D%7D>

³³ *Youth Initiative for Human Rights v. Serbia*.

³⁴ *Roşianu v. Romania*. 2014..

had filed a complaint, and therefore his opinion on this public issue, in principle, can be identified with his personality. However, the Court considers that it would be fatal to freedom of expression in politics if public figures could censor the press and public debate in the name of their individual rights, arguing that their opinions on public affairs are connected with their personality and are therefore private. data that cannot be disclosed without consent. These considerations cannot, in the Court's opinion, justify the interference complained of in this case. The Court considers that obstacles created to prevent access to information of public interest may prevent those working in the media or related fields from engaging in such cases. As a result, they will no longer be able to fulfill their vital role as "watchdogs of society" and their ability to provide accurate and reliable information can be negatively impacted. The above considerations lead the Court to conclude that the interference with the applicant's freedom of expression in this case cannot be considered necessary in a democratic society.³⁵

In *Center for Democracy and Rule of Law v. Ukraine*, application no. 10090/16, decision of 26 March 2020, the applicant organization claimed that the state authorities denied it access to the information necessary for its activities, in violation of Art. 10 Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR unanimously recognized that the refusal of the Ukrainian authorities to provide an NGO with access to education, the work of political leaders, which was contained in their autobiographies submitted to the election commission, violated the NGO's right to access public documents in accordance with Art. 10 Convention for the Protection of Human Rights and Fundamental Freedoms. The Court emphasized that this case was one of the first cases following the Grand Chamber's decision in *Magyar Helsinki Bizottság v. Hungary*, which raises a new issue at the national level for Ukrainian authorities and courts. This decision, delivered during the Covid-19 pandemic, clearly illustrates how important it is, more than ever, for the Court to apply strict scrutiny under Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms in cases of access to public records, recognizing the importance transparency on matters of public interest.³⁶

5. Key Problems of Realization of the Human Right to Access Public Information

Despite the rather high-quality legislation of Ukraine in the field of access to public information, there are a number of important problematic issues in the field of legal support of this human and civil right that need to be addressed: eliminate legislative gaps in the field of access to public information, improve the legal mechanism for monitoring compliance with the right to access to public information; improve the quality of a person's passive access to public information; strengthen liability for abuse of the right to public information of requesters under martial law; eliminate violations of the legislation on the disclosure of information of high public interest, and improve the legal mechanism for protecting the right to access to public information, taking into

³⁵ Case of *Társaság a Szabadságjogokért v. Hungary*, 2009

³⁶ *Centre for Democracy and Rule of Law v. Ukraine* [<https://www.echr.coe.int>]

account the practice of the ECtHR. We also consider it appropriate to update domestic legislation by amending the Law of Ukraine “On Access to Public Information”, including taking into account the practice of the ECtHR or in another version of an integrated approach to optimizing legal support, in particular, by adopting and developing the “Information Code of Ukraine”.

In the context of Art. 10 ECHR (freedom of expression), the following cases can be distinguished: *Guseva v. Bulgaria* (2015), access to information of public interest; *Magyar Helsinki Bizottság v. Hungary* (2016) violation of the right of an NGO to freedom of expression; *Studio Monitori and Others v. Georgia* (2020), did not find a violation of freedom of expression when the Georgian authorities refused to disclose the materials of a criminal case against an NGO and its journalist because the latter did not indicate the purpose of the request for information; *Center for Democracy and Rule of Law v. Ukraine* (2020) violated the right of an NGO to access public documents; *Weber v. Germany* (2015); *Gillberg v. Sweden* (2015); *Kenedy v. Hungary* (2009) appealed against the authorities' reluctance to comply with a court order granting him unrestricted access to certain documents held by the Hungarian Ministry of the Interior; *Tarsasaga Szabadságjogokert v. Hungary* (2009) denying an NGO access to public documents when the Hungarian Civil Liberties Union (HCLU) asked for access to a complaint filed with the Constitutional Court by a deputy; *Sdruženi Jihočeske Matky v. the Czech Republic* (2006); *Bucur and Toma v. Romania*, (2013) and others

Another of the key tasks for our state in the field of access to public information is the approximation of legal standards in Ukraine to European standards, by joining Ukraine to the Conventions that form the basis of the Council of Europe treaties. In addition, it is necessary to implement a joint project “The European Union and the Council of Europe work together to strengthen human rights in Ukraine”, in particular, one of its components “The European Union and the Council of Europe work together to support freedom of the media in Ukraine”, the expected result of which is ensuring access to public information and transparency in the activities of public information managers.

6. Conclusion

For the purpose of more efficient functioning and development of the legal provision of access to public information, the norms of international and European law should be taken into account. The right of access to public information derives from the provisions of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which enshrines the right to freedom of expression and provides for the freedom to hold opinions, receive and impart information and ideas without interference by public authorities and regardless of borders. The right of a person and a citizen to access public information is closely related to other human rights. The practice of the European Court of Human Rights shows that violation of the right to access to public information has negative consequences in completely different areas of human life. Therefore, in order to effectively ensure the right to access to public information, states should be guided by the practice of the ECtHR and implement its judgments in their national legislation. In the same way, they must adhere to

international standards in this area and ratify those international legal acts that have not yet become part of the national legislation in Ukraine.

References

- Gerards, Janneke. "Margin of appreciation and incrementalism in the case law of the European Court of Human Rights." *Human rights law review* 18, no. 3 (2018): 495-515.
- Helfer, Laurence R. "Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European human rights regime." *European Journal of International Law* 19, no. 1 (2008): 125-159.
- Kaplina, Oksana, and Anush Tumanyants. "ECtHR Decisions That Influenced the Criminal Procedure of Ukraine" *Access to Justice in Eastern Europe*, 1, no.9, (2021):102–121. DOI: 10.33327/AJEE-18-4.1-a000048
- Marushchak, Anatoly. *Information law of Ukraine*. Kyiv: Dakor, 2011.
- Mendel, Toby. "Freedom of Information as an Internationally Protected Human Rights". *Comparative Media Law Journal*, 1, no 1. (2003). <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>
- Minaverri, Clara. "The right to participation and the right to access to public information and how they relate to Argentine environmental law for the conservation of biodiversity. A study of cases for the legal protection of native forests and wetlands." *Dikaion* 25, no. 2 (2016): 216-242.
- Mykhailiuk, Galyna, and Larry A. DiMatteo. "Creating a comprehensive peaceful assembly law for Ukraine: Idea and ideal." *New Perspectives* 29, no. 1 (2021): 45-68.
- Rastorhuiev, Oleksandr, Petro Makushev, Alla Pukhtetska, Andriy Hridochkin, and Irina Smaznova. "Protection of Human Rights and Freedoms in the Administrative Proceedings of the European Union." *Hasanuddin Law Review* 7, no. 3 (2021): 210-225. DOI: <http://dx.doi.org/10.20956/halrev.v7i3.3215>.
- Riegner, Michael. "Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective. *Verfassung Und Recht in Übersee*". *Law and Politics in Africa, Asia and Latin America*, 50 no 4 (2017): 332–366. <https://www.jstor.org/stable/26540817>
- Riekkinen, Mariya, and Markku Suksi *Access to information and documents as a human right. Turku/Åbo: Åbo Akademi University, Institute for Human Rights*, 2015. <https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf>
- Shevchuk, Oleksandr, Mykola Kucheryavenko, Svitlana Davydenko, and Oleksandra Babaieva. "Implementation of the patient's right to obtain information in the

- concept "health and human rights". *Amazonia Investiga* 9, no. 29 (2020): 288-296.
- Shevchuk, Oleksandr, Nataliya Matyukhina, Oleksandra Babaieva, Anatoliy Dudnikov, and Olena Volianska. "The human right to security in the implementation of the concept of the" right to health protection". *Juridical Tribune Journal, Tribuna Juridica* 11, no. 3 (2021): 535-548.
- Shevchuk, Oleksandr, Oleg Bululukov, Oleksandr Lysodyed, Valentyna Mamonova, and Yurii Matat. "Human right to virtual reality in the healthcare: legal issues and enforcement problems". *Juridical Tribune - Tribuna Juridica*, 11, Special Issue, (2021): 302 -315.
- Shevchuk, Oleksandr, Oleksandr Lysodyed, Igor Borysenko, Oleg Bululukov, and Oleksandra Babaieva. "Legal support of the patient's right to innovation in health." *European journal of sustainable development* 9, no. 4 (2020): 337-337.
- Shevchuk, Oleksandr, Valentyna Zui, Ivanna Maryniv, Svitlana Davydenko, and Sergii Mokhonchuk. "Human Right to Internet Access in Healthcare in the "Right to Health Concept": Legal Issues." *European Journal of sustainable development* 10, no. 2 (2021): 286-286.
- Tsybulska, A. "The right to access information in Ukraine: constitutional and legal aspect". *Bulletin of the Alfred Nobel Dnipropetrovsk University. Series "Legal Sciences*, 5 no. 2(2013): 49-54.
- Udombana, Ngozi J., and Kafayat Motilewa Quadri. "Institutional Framework on the Right to Information in Selected Jurisdictions." *Beijing L. Rev.* 11 (2020): 244-261.
- Vilchik, Tetyana. "Advocacy of Ukraine in the period of martial law and restoration after the war: problems of legal regulation of the organization and activities." *Revista Jurídica Portucalense* (2022): 254-273.
- Viljanen, Jukka. *The European Court of Human Rights as a Developer of the General Doctrines of Human Rights Law. A Study of the Limitations Clauses of the European Convention on Human Rights*. Tampere University Press, 2003.
- Yevgeny, Larin. "The constitutional right to information: concept and its essence ". *Scientific Bulletin of the International Humanitarian University. Ser.: Jurisprudence*, 1 no. 1 (2019): 63-67.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © HALREV. This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Hasanuddin Law Review (Hasanuddin Law Rev. – HALREV) is an open access and peer-reviewed journal published by Faculty of Law, Hasanuddin University, Indonesia.

