



## **Council of Europe Group on Access to Information (AIG)**

**Report submitted by Ukraine  
pursuant to Article 14, paragraph 1  
of the Council of Europe Convention  
on Access to Official Documents (CETS No.205)**

**Received by the Secretariat on 5 November 2021**

## I - GENERAL INFORMATION

### (i) General information regarding the preparation of the report

#### a. The existence or not of a State body/agency responsible for the preparation of the report as well as the State bodies/agencies which contributed to the report by providing relevant information.

The powers of the state body responsible for the preparation of this report are exercised by the Ministry of Culture and Information Policy of Ukraine (hereinafter - MCIP) as the central body of executive power whose authorities include formation and implementation of the state policy in the information sphere.

MCIP developed the Procedure for the selection of candidates for nomination for election as members of the Group of Specialists on Access to Official Documents, approved by MCIP Order dated May 27, 2021 No. 371, registered with the Ministry of Justice of Ukraine on June 24, 2021 under No. 834/36456. The MCIP also organized a competition.

The selection of candidates for the Group of Specialists on Access to Official Documents was announced by the MCIP Order of July 9, 2021 № 507. Until 21 July 2021, every citizen of Ukraine who met the requirements of the Council of Europe Convention on Access to Official Documents, Resolution CM / Res (2021) 2 of the Committee of Ministers of the Council of Europe on the procedure for selecting members for the Group of Specialists on Access to Official Documents and Procedure had the right to submit the documents required to participate in the selection.

On July 23, 2021, Tatyana Oleksiyuk and Igor Rozkladai were recognized as the winners of the selection of candidates for nomination for election as members of the Group of Specialists on Access to Official Documents by the permanent selection committee formed by the MCIP for the selection of candidates nominated to the Group of Specialists on Access to Official Documents.

#### b. The involvement, participation or consultation with relevant non-state stakeholders including NGOs, civil society and any other relevant stakeholder in the implementation of the Convention.

The Explanatory Report to the Council of Europe Convention on Access to Official Documents has been translated into Ukrainian

<https://rm.coe.int/explanatory-report-to-the-council-of-europe-convention-on-access-to-of/1680a23bf0>

The following stakeholders were involved in the implementation of the Council of Europe Convention on Access to Official Documents: Council of Europe Office in Ukraine, Ukrainian Helsinki Human Rights Union, Anti-corruption Research and Education Centre (ACREC), State Scientific Institution "Institute of Information, Security and Law of the National Academy of Legal Sciences of Ukraine", NGOs: 'Center for Democracy and the Rule of Law', 'Human Rights Platform', 'Center for Political Studies', 'Digital Security Lab Ukraine', 'Ukrainian Institute for Human Rights', 'Institute of Mass Information', 'Training and Consulting Center for Access to Information'.

(ii) *Information on the legal framework and on specific measures and policies that they have adopted to implement the Convention.*

Access to official documents in Ukraine is regulated by the Constitution of Ukraine and the Law of Ukraine "On Access to Public Information". According to article 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, to free expression of their views and beliefs. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way of their choice. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order with the aim of preventing disorder or crime, protecting public health, the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining credibility and impartiality or justice.

In 2021, Ukraine celebrated the tenth anniversary of the adoption of the Law of Ukraine "On Access to Public Information" which in Ukraine became a step forward in the implementation of one of the most important human rights - the right to freedom of information.

The team of the Law authors took into account the main provisions of the then adopted but not ratified Convention of the Council of Europe on Access to Official Documents and the recommendations of the Committee of Ministers of the Council of Europe R (2002) 2. It was the establishment of new standards that brought Ukraine into the top ten countries in terms of the quality of the text of the law. And although many new progressive laws have been adopted over the past 10 years, the Ukrainian Law confidently ranks the 17th in the world.

Therefore, it is due to the Law of Ukraine "On Access to Public Information" that most of the standards of the Council of Europe Convention on Access to Official Documents have been implemented in Ukraine for more than 10 years. As a result of the ratification of the Convention by Ukraine in 2020 the Convention entered into force.

The success of the Law was the result of the partnership between civil society organizations, journalists and information administrators. Immediately after the adoption of the Law, methodological recommendations for the implementation of the Law were developed, then published in two editions and distributed via the Internet. A year later a scientific and practical commentary was released that helped information administrators get answers to difficult questions. Information administrators regularly go through advanced training which made it possible from the very beginning to efficiently implement the Law.

MCIP, as the central body of executive power for the implementation of information policy, ensures that the regular meetings are held for representatives of information administrators in order to resolve organizational issues to guarantee the provision of information upon request.

## II - LEGISLATIVE AND OTHER MEASURES GIVING EFFECT TO THE PROVISIONS OF THE CONVENTION

### Article 1 – General Provisions

#### 1.1 *The definition of “public authorities” as adopted in national legal and/or policy frameworks relating to access to official documents, including specifications and/or examples of authorities covered by this definition.*<sup>1</sup>

The Law of Ukraine "On Access to Public Information" in Article 13 provides a list of categories of administrators of public information. So, the administrators are recognized as:

- 1) subjects of public authorities - government bodies, other government institutions, local self-government bodies, government bodies of the Autonomous Republic of Crimea, other subjects exercising authoritative management functions in accordance with law and whose decisions are binding;
- 2) legal entities financed from the state, local budgets, the budget of the Autonomous Republic of Crimea – in the sense of information on the use of budgetary funds;
- 3) individuals, if they perform the delegated powers of the subjects of power under the law or contract, including the provision of educational, health, social or other public services - in the sense of information related to the performance of their duties;
- 4) economic entities that occupy a dominant position in the market or are endowed with special or exclusive rights, or are natural monopolies – in the sense of information on the conditions for the supply of goods or services and prices for them.

The Law of Ukraine “On Ratification of the Council of Europe Convention on Access to Official Documents” confirms that, in accordance with paragraph 2 of Article 1 of the Convention, Ukraine declares that the definition of “state bodies” also includes: legislative bodies in the sense of their other functions; judicial authorities in the sense of their other functions; natural or legal persons to the extent that they perform public functions or manage public funds in accordance with the national legislation. "

#### 1.2 *The definition of “official documents” as adopted in relevant national legal and/or policy frameworks, including specific information as to whether this definition covers information stored electronically or in databases.*

The Law of Ukraine “On Access to Public Information” gives the following definition of public information: “Public information is information that was obtained or created by the subjects of government powers in the process of exercising their obligations under the current legislation and then reflected and documented by any means and on any media, or which is in the possession of subjects of power, or other administrators of public information determined by this Law. "

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<sup>1</sup> The Parties could also provide specifications and/or examples of activities performed by legislative bodies, judicial authorities and natural or legal persons which may be included in the definition of public authorities on the basis of a declaration made by the Party pursuant to Article 1, paragraph (2)(a)(ii)(1), Article 1 paragraph (2)(a)(ii) (2) or Article 1, paragraph (2)(a)(ii)(3).

Both Ukrainian legislation and the Convention on Access to Official Documents provide that the right of access is limited to available documents. The Convention does not oblige administrators to create new documents upon requests for information. If we draw an analogy with the Ukrainian legislation, then the Law of Ukraine "On Access to Public Information" also speaks of providing only "ready-made and recorded information" (except for cases when the information at the time of receipt of the request must have already been created in accordance with the law).

Also, the Law of Ukraine "On Access to Public Information" provides for the obligation of administrators of public information to provide information in electronic form and sets of open data. Thus, Article 10-1 of the Law of Ukraine "On Access to Public Information" provides that public information in the form of open data is public information in a format that allows its automated processing by electronic means, unrestricted and free of charge access to it, as well as its further use. Information administrators are obliged to provide public information upon request in the form of open data, publish and regularly update it on the unified state web portal of open data and on their websites.

## Article 2 – Right of access to official documents

### 2.1 *The legal and/or policy framework guaranteeing the right of access to official documents, including specific information on relevant domestic laws, regulations and policies recognising the right of access to official documents.*

The Constitution of Ukraine (Articles 32, 34) provides for the right of everyone to freely collect, store, use and disseminate information orally, in writing or in any other way - at their choice. Also, the Constitution provides for the right to get acquainted in state authorities, local governments, institutions and organizations with the information about oneself that is not a state or another secret protected by law. Article 50 of the Constitution guarantees the right of free access to the information about the state of the environment, the quality of food and household items (such information cannot be classified).

In 2011, Ukraine adopted the Law of Ukraine "On Access to Public Information", which defines the legislative framework for ensuring the right of access to information. The Law of Ukraine "On Access to Public Information" complies with and is based on the best international standards developed by the public organization Article 19. In 2012, it entered the top ten access laws in the world according to the Global Right To Information Rating.

### 2.2 *Specifications as to whether the right of access to official documents is guaranteed to everyone, including non-nationals of the Party.*

Article 34 of the Constitution of Ukraine provides for the right of everyone to receive information. It does not contain any restrictions on the citizenship of the questioner.

### 2.3 *Whether the Party guarantees the right of access to official documents irrespective of the use of the information received by the applicants of access.*

The Law of Ukraine "On Access to Public Information" in Article 19 provides that the applicant has the right to contact the information administrator with a request for information regardless of whether this information concerns him or her personally or not, without explaining the reason for submitting the request. Likewise, judicial and administrative practice allows the processing of anonymous requests, without identification of the person, or, for example, the citizenship of the person.

### Article 3 – Possible limitations to access to official documents

#### 3.1. Whether the Party has introduced **limitations** to the right of access to official documents, including specific information on such limitations, whether they are set by law and whether the relevant legal and/or policy frameworks provide for limitations of the right of access to official documents which pursue aims not listed in Article 3(1), and if so, specifying which ones;

In accordance with Article 21 of the Law of Ukraine "On Information" and Part 1 of Article 6 of the Law of Ukraine "On Access to Public Information", information may be restricted in access by classifying it into one of three types: confidential, secret or proprietary.

Confidential information is information access to which is limited to an individual or legal entity, except for subjects of authority. Confidential information can be disseminated at the request (consent) of the person concerned in the manner determined by him or her in accordance with the conditions provided for by such information, as well as in other cases determined by law.

Secret information is information the disclosure of which may harm an individual, society and the state. Information containing state, professional, banking secrets, pre-trial investigation secrets and other secrets determined by law is considered secret.

Proprietary information is information that belongs to one of two categories: 1) information that is contained in the documents of the subjects of power which constitute intradepartmental official correspondence and precede public discussion and / or decision-making; 2) information collected in the course of operational-search, counterintelligence activities, in the field of the country's defense, which is not classified as a state secret.

At the same time, part 2 of Article 1 of the Law of Ukraine "On Access to Public Information" stipulates that all public information is open except in cases established by law. Restricting access to public information (official documents in the sense of the Council of Europe Convention on Access to Official Documents) is possible only if the "three-part test" provided for in part 2 of Article 6 of the Law of Ukraine "On Access to Public Information" is applied.

#### 3.2 **Specification as to why the limitations to the right of access to official documents are necessary and as to their proportionality to the aims listed in Article 3, paragraph 1;**

Part 2 of Article 6 of the Law of Ukraine "On Access to Public Information" establishes a general rule for restricting access to information. This restriction is carried out in accordance with the law and is subject to the following set of requirements:

- 1) solely in the interests of national security, territorial integrity or public order, in order to prevent disorder or criminal offenses, to protect public health, the reputation or rights of others, to prevent the disclosure of information received in confidence, or to ensure the authority and impartiality of justice;
- 2) the disclosure of information can cause significant harm to these interests;
- 3) the damage from the release of such information outweighs the public interest in obtaining it.

The application of such a legal mechanism involves assessing the necessity and proportionality of restricting access to information. The Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application of legislation on access to public information by administrative courts" summarizes judicial practice and gives instructions to courts that consider cases on access to information: "6.3. Legal interests for the protection of which it is possible to restrict access to information are only those that are listed in paragraph 1 of part two of Article 6 of the Law of Ukraine "On Access to Public Information", corresponding to Article 34 of the Constitution of Ukraine. At the same time, restricting access to information should be an appropriate measure to achieve the goal - to protect the relevant interest. The restriction of access must be proportionate (not excessive) to the legitimate interest that is being protected, that is, the restriction must not go further than the necessary to protect the said interest.

The courts should take into account that paragraph 2 and paragraph 3 of the second part of Article 6 of the Law of Ukraine "On Access to Public Information" actually require in each case to establish a balance between the interest that is protected and which may be damaged from the disclosure of information, and the public's right to know the requested information. At the same time, the requirement to establish, during the consideration of the case by the court, whether the necessary balance was observed between any adverse consequences for the rights, freedoms and interests of a person and the goals to be achieved by this decision (action) is also established by paragraph 8 of part three of Article 2 of the Code of Administrative Proceedings of Ukraine. "

3.3. *Whether the Party's legal and/or policy framework contains provisions which permit **refusal** of access to official documents in compliance with Article 3, paragraph 2;*

Part 1 of Article 22 of the Law of Ukraine "On Access to Public Information" provides an exhaustive list of grounds for denying access to public information (official documents). The information administrator has the right to refuse to satisfy the request in the following cases:

- 1) the information administrator does not have and is not obliged, in accordance with his/her competence provided for by law, to have the information for which the request is made;
- 2) the information that is requested belongs to the category of information with limited access in accordance with part two of Article 6 of this Law;
- 3) the person who submitted the request for information has not paid the actual costs provided for in Article 21 of this Law relating to copying or printing;
- 4) the requirements for a request for information provided for by part five of Article 19 of this Law have not been met.

The second paragraph of this article provides for the restriction of access to official documents based on the results of the application of the "three-part test". In case the information administrator does not have a conclusion on the presence of at least one of the above three grounds of the "three-part test", it means that there are no legal grounds for restricting access to information, and the denial of access to public information is unreasonable.

3.4. *How does the public authority evaluate an overriding public interest when deciding to disclose official documents that would harm one of the interests listed in Article 3, paragraph 1.*

The concept of "socially necessary information" is partially explained in Article 29 of the Law of Ukraine "On Information", which contains a list of information that is a subject of public interest. This list is not exhaustive and includes information that:

- indicates a threat to the state sovereignty or territorial integrity of Ukraine;
- ensures the implementation of constitutional rights, freedoms and obligations;
- indicates the possibility of human rights violations, misleading the public, harmful environmental and other negative consequences of the activities (inactivity) of individuals or legal entities.

The answer to the question whether this or that information is socially necessary depends on the circumstances of the situation, the nature of the information, the role of the questioner in public life and many other factors. The Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application of legislation on access to public information by administrative courts " in clause 6.4. summarizes the categories of information that have a strong public interest and circumstances that should be considered when ensuring a balance while limiting access to official documents.

Article 4 – Requests for access to official documents

4.1 *Whether the Party's legal and/or policy framework on access to official documents guarantees that the applicant shall not be obliged to give reasons for having access to official documents;*

According to Part 2 of Article 19 of the Law of Ukraine "On Access to Public Information", the applicant has the right to contact the information administrator with a request for information, regardless of whether this information concerns him or her personally or not, without explaining the reason for submitting the request. The Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application of legislation on access to public information by administrative courts" in clause 9.6 also notes that: "When deciding whether to provide information in response to a request, any information administrator should focus not on the personality of the applicant or the circumstances of his/her life, but consider the fact that such information is disclosed to an unlimited number of people. "

4.2 *Whether anonymous requests for access to official documents are authorised and if so, how the public authorities implement this in practice and how are the applicants informed about this possibility;*

Part 5 of Article 19 of the Law of Ukraine "On Access to Public Information", which defines the requirements for filling out a request for information, provides that the request must contain the name of the applicant and her / his signature. However, the jurisprudence and clarifications of the Ombudsperson clearly state that administrators should process anonymous requests for information in cases where the identification of the applicant is not relevant to the satisfaction of the request. Thus, the Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application of legislation on access to public information by administrative courts" in clause 9.6 provides that: "The requirement to indicate the name (title) of the applicant in the request is informative for the administrator and does not affect the compliance with the requirements of the Law. The duty of the administrator to provide information (documents) to the request does not change depending on the identity of the applicant and the indication of his/her name in the request, if there are no grounds for restricting access to such information".

It is due to the current judicial practice in Ukraine that information is provided on such requests.



4.3 Measures taken to assess the necessity of the **formalities** applicable to requests for access to official documents or to periodically review such formalities.

According to Article 19 of the Law of Ukraine "On Access to Public Information", a written request can be submitted in any form.

In order to simplify the procedure for processing written requests for information, an individual can submit a request by filling out information request forms which can be obtained from the information administrator and on the official website of the latter.

These forms must contain brief instructions on the procedure for submitting a request for information, obtaining it, etc.

In addition, guidelines have been developed for providing access to public information and they are published for free distribution among the population and are made public on the Internet.

Article 5 – Processing of requests for access to official documents

5.1 Measures taken by public authorities to **process requests** for access to official documents and to **provide assistance** to a person requesting such access:

Part 3 of Article 19 of the Law of Ukraine "On Access to Public Information" provides for the obligation of information administrators to accept and process requests for information that come to them in various forms (in writing by regular mail, e-mail, orally and through forms on websites) and process them. For this, administrators of public information as subjects of power authorities must determine special structural units or individual officials responsible for access to information. Such officials, in accordance with Part 1 of Article 16 of the Law of Ukraine "On Access to Public Information" are obliged to provide consultations to the applicants when receiving a request. Also, part 7 of article 19 of the Law of Ukraine "On Access to Public Information" provides for the obligation to provide assistance in filling out a request for a person who, for valid reasons (disability, limited physical abilities, etc.), cannot submit a written request on their own.

5.2 Measures taken by public authorities to ensure that requests for access to official documents are dealt with on an equal basis and that **no distinction** is made on the basis of the nature of the request or the status of the applicant:

According to Part 2 of Article 19 of the Law of Ukraine "On Access to Public Information", the applicant has the right to contact the information administrator with a request for information regardless of whether this information concerns him/her personally or not, without explaining the reason for submitting the request. The Constitution of Ukraine in Article 34 provides for the right of everyone to freely collect, store, use and disseminate information orally, in writing or in any other way at their choice. Administrative practice also shows that information administrators treat requests for information equally and without discrimination, regardless of the identity of the applicant.

5.3 Whether a maximum **time limit** is set for public authorities, by law, any other applicable policy framework or through practice, to reach a decision on a request for access to official documents, notify the applicant about the decision, to make the document available if the decision is favourable, and to inform the applicant about any possible delays:

In accordance with Article 20 of the Law of Ukraine "On Access to Public Information", the information administrator must provide a response to the request for information no later than five working days from the date of receipt of the request. Also, if the request concerns the provision of a large amount of information or requires a search for information among a significant amount of data, the information administrator may extend the period for consideration of the request up to 20 working

days with the justification for such an extension. The information administrator shall notify the applicant of the extension of the term in writing no later than five working days from the date of receipt of the request.

In order to ensure quick access to information in emergencies, if the request for information relates to information necessary to protect the life or liberty of an individual, or to the state of the environment, the quality of food and household items, accidents, catastrophes, dangerous natural phenomena and other emergencies which have occurred or may occur and threaten the safety of citizens, the response must be provided no later than 48 hours from the date of receipt of the request. According to Part 6 of Article 22 of the Law of Ukraine "On Access to Public Information", a delay in satisfying a request for information is allowed if the requested information cannot be provided for review within the timeframe provided for by this Law in the event of force majeure circumstances. The decision to defer is brought to the attention of the applicant in writing with an explanation of the procedure for appealing against the decision.

5.4 *Whether the public authority gives reasons in cases of refusal of access to official documents, wholly or in part, on its own initiative and whether it provides justification in writing to the applicant upon his/her request for explanations about the refusal.*

In accordance with parts 4 and 5 of Article 22 of the Law of Ukraine "On Access to Public Information", a refusal to satisfy a request for information must indicate: 1) first name, patronymic, surname, and the position of the person responsible for the consideration of the request by the information administrator; 2) the date of refusal; 3) a reasoned basis for refusal; 4) the procedure for appealing against the refusal; 5) the signature of the official. Refusal to satisfy a request for information is provided in writing.

Article 6 – Forms of access to official documents

6.1 *The form or format in which official documents are made available to the applicant once access to these documents is granted as well as information on whether the applicant has the possibility to choose the form of the document he/she wishes to consult in compliance with Article 6, paragraph 1;*

Ukrainian legislation guarantees access to official documents available from information administrators in any form. According to Part 1 of Article 1 of the Law of Ukraine "On Access to Public Information", public information is information reflected and documented by any means and on any media that was received or created by subjects of government powers in the process of exercising their obligations stipulated by the current legislation, or which is possessed by subjects of power, or other administrators of public information determined by this Law.

6.2 *How the public authority deals with requests to access official documents for which some of the information cannot be disclosed due to applicable limitations. Information on whether the rest of the document is released and whether the relevant decision of the public authority gives clear indications as to where and how much information is deleted and indicates the limitation justifying each deletion.*

Ukrainian legislation provides for the possibility of access to part of the document in the case when the document contains information with limited access. Thus, in accordance with Part 8 of Article 6 of the Law of Ukraine "On Access to Public Information", information, not a document, is subject to restriction of access. If the document contains information with limited access, the information access to which is not limited is provided for review. Administrative and judicial practice provides for

the possibility of the applicant to receive a document in response to a request, even in the case when part of the document is restricted in access.

In accordance with clause 85 of the Standard Instruction on the procedure for keeping records of, storage, use and destruction of documents and other material media containing official information approved by the resolution of the Cabinet of Ministers of Ukraine dated October 19, 2016 No. 736, if the requested document contains information with limited access, a copy of it is made in which words, sentences or images containing information with limited access are retouched in a way that excludes the subsequent reproduction of the retouched. Another copy is made from such a copy of the document and then it is sent to the applicant. Thus, the legislation defines the obligation of information administrators to clearly identify the parts of the document access to which is limited.

#### Article 7 – Charges for access to official document

7. *Whether inspection of official documents on the premises of the public authority is ensured free of charge, whether the applicant can obtain a copy of the requested official documents free of charge or in the case that fees are charged information on whether they are published and if so, how and where.*

According to the second part of Article 21 of the Law of Ukraine "On Access to Public Information", if the satisfaction of the request for information provides for the production of copies of documents of more than 10 pages, the applicant is obliged to reimburse the actual costs of copying and printing. In the above provision, the actual costs mean all costs incurred when copying and / or printing documents of a volume of more than 10 pages. That is, the applicant of information is obliged to reimburse the costs of producing all pages of the requested information, except for the first 10 pages. Although the issue of providing with the first 10 pages of the document (part of the information) by the information administrator free of charge simultaneously with notifying the applicant of the need for reimbursement for the costs or notification of the refusal to satisfy the request in connection with non-reimbursement for the relevant costs is not directly regulated by the Law of Ukraine "On Access to Public Information" or others current regulatory legal acts, however, judicial and administrative practice adhere to this position.

The Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application of legislation on access to public information by administrative courts " in paragraph 12.4 provides that: "In accordance with paragraph 3 of part one of Article 22 of the Law of Ukraine" On access to public information "the information administrator has the right to refuse to satisfy the request if the person who submitted the request for information did not pay the actual costs associated with copying or printing. It follows from the above provision that the refusal to satisfy the request on this basis is possible only if two circumstances exist simultaneously: the information administrator establishes the amount of payment for copying or printing, the information administrator informs the applicant for information about the size and methods of paying the actual costs of copying and / or printing the requested information ".

The Resolution of the Cabinet of Ministers of Ukraine dated July 13, 2011 No. 740 "On Approval of the Limit Norms of Costs for Copying or Printing Documents Provided upon Request for Information" sets the maximum cost limit that may be associated with copying and printing documents requested by the applicant. However, the administrator of public information must determine their own actual costs and approve them by an internal administrative act, and therefore the demand for reimbursement for such costs must be justified.

## Article 8 – Review procedure

### 8.1 Whether the relevant legal and/or the policy framework provides for a **review procedure**, before a court or another independent and impartial body established by law, which is accessible by the person whose request for having access to official documents has been denied;

Now in Ukraine there are two separate ways of resolving disputes in the field of access: a) appeal to a court empowered to make decisions on the merits of the case (that is, to determine whether the administrator's refusal to provide access to information in the manner prescribed by law was lawful), and

b) appeal to the Ombudsperson, whose regional representatives draw up protocols on the facts of violation of the right of access to information, which in turn are the basis for the imposition of an administrative penalty by the court.

### 8.2 The **type of decisions** made by the court or the independent body, notably whether the latter is able to overturn decisions taken by public authorities which it considers to not comply with the applicable law/s, or to request the public authority in question to reconsider its position;

It is possible to appeal to the court against the decision, actions or inaction of all information administrators without exception, including the response of the head of the administrator, the highest authority or the Ombudsperson to a previously filed complaint.

Consideration of cases in administrative courts on the merits ends with the adoption of a generally binding court decision which can be enforced through a special service for the execution of court decisions.

The court may render one of the following decisions:

- recognize the decision of the information administrator (or some of its provisions) unlawful;
- cancel or recognize such a decision or some of its provisions invalid;
- recognize the actions or inaction of the information administrator as unlawful;
- oblige the defendant to take certain actions (for example, provide information, publish certain information on the official website, publish the decision of the administrator, etc.);
- oblige the defendant to refrain from performing certain actions (for example, not to interfere with the access of the applicant to meetings of collegial subjects of power);
- recover funds from the defendant (for example, legal costs).

The court is empowered to make a decision on compensation for material and moral damage caused to the requestor by unlawful decisions, actions or inaction of the information administrators. The legislation provides for criminal liability for non-execution of a court decision.

### 8.3 The **duration** in time of the review procedure involving either reconsideration by a public authority or by the court or the independent body and whether fees are charged for it.

The judicial procedure for appealing against actions or inaction of information administrators in Ukraine is effective.

According to the current legislation, the procedure for considering cases by the courts is 60 days but due to the overload of administrative courts the average consideration of a case in the first and appeal instance can last up to 3 months.

Filing a claim with the court is associated with additional costs. The complainant must pay a court fee and, in the overwhelming majority of cases, involve a lawyer to represent the case in court. As of the time of drawing up this report, the applicant must pay a court fee equivalent to approximately US \$ 34 and an appeal fee of approximately US \$ 57-71 for a first instance claim.

In Ukraine there are public organizations that provide lawyers free of charge to assist in appealing the actions or inaction of information administrators in court, and also pay the court fee.

The procedure for appealing to the Ombudsperson is carried out in accordance with the Law of Ukraine "On Citizens' Appeals", which provides for a short period for considering complaints - 1 month (with the possibility of extending up to 45 days). In practice, such a procedure may take a little more time due to the fact that the representatives of the Ombudsperson must personally familiarize the official for whom it was drawn up with the protocol. However, an appeal to the Ombudsperson does not require payment of funds.

## Article 9 – Complementary measures

### 9.1 *Measures taken by public authorities to inform the public about its right of access to official documents and how this right can be exercised:*

In order to inform the public about the right to access public information and the mechanisms for its implementation, MCIP and other public authorities with the participation of the expert community systematically conduct educational events: seminars, training sessions, expert discussions, and the publication of information materials.

Every year on September 28, Ukraine celebrates the Day of the Right to Know and the International Day of Access to Information, which was proclaimed in 2002 in Sofia (Bulgaria) at the meeting of public and international organizations specializing in freedom of information.

The Forum of Defenders of the Right to Access Information is traditionally held on this day. The purpose of the Forum is professional development, exchange of experience and joint development of strategies aimed at improving access to information. The Forum is attended by representatives of government agencies, experts in the field of access to information, lawyers with extensive practice in cases of access to information.

### 9.2 *Training and any other measures taken to ensure that public authorities are aware of and knowledgeable about their duties and obligations concerning the implementation of the right of access to official documents:*

1. In accordance with Article 16 of the Law of Ukraine "On Access to Public Information", the administrators of public information - subjects of power - must assign a special official person responsible for access to information. The information administrator is responsible for defining the tasks and ensuring the activities of the structural unit or the person in charge of access to public information of the information administrators responsible for processing, systematizing, analyzing and monitoring the satisfaction of the request for information, providing advice when filling out the request, as well as for the disclosure of information provided by this Law. Ukrainian legislation does not define a special training program for civil servants who provide access to information, although the Secretariat of the Ombudsperson and MCIP, as the body responsible for the formation and implementation of the state policy in the information sphere, conduct regular training on access to information for the officials of administrators.

2. Training sessions for civil servants of central executive authorities on the application of the Council of Europe Convention on Access to Official Documents were conducted. Each training session lasted three hours and consisted of two parts (1.5 hours each). The total number of participants was about 100. The first part of each session covered the topic “Convention of the Council of Europe on access to official documents and its relationship with the rules governing the field of public information and responsible officials”. The second part included the topic “Procedure for responding to requests and restricting access to information: application of the Convention and the current legislation of Ukraine”.

3. Four training sessions for judges of the first and appellate instances of administrative courts were conducted. In total, more than 90 judges of the first instance of appellate courts and more than 50 judges of appellate courts from all regions of Ukraine took part in the training. All training materials were approved by the Expert Council of the National School of Judges. The training aimed to present the provisions of the Council of Europe Convention on Access to Official Documents and to discuss the mechanisms of application of the Convention and national legislation. The lecture materials were divided into four parts:

- review of international agreements that recognize the right to information and review of international bodies that protect human rights on the basis of such international agreements;
- presentation of the best international practices and approaches to balancing the right to information and the right to confidentiality at both national and international levels;
- warning about potential conflicts between the rules of the Convention and the norms of the national legislation. Particular attention was paid to the case law of the national courts, which helps to better understand how the provisions of the Convention can be applied in the event of conflict with the national law. In particular, considerable attention was paid to the definition of official information, identification of authorized bodies and classification of official information;
- case studies: currently there are no court decisions based on the provisions of the Convention, so a typical case based on the example of different approaches in the Convention and the national law was considered.

<http://nsj.gov.ua/ua/news/dostup-do-publichnoi-informatsii-u-svitli-konventsii-radi-evropi-pro-dostup-do-ofitsiynih-dokumentiv1/>

[http://nsj.gov.ua/ua/news/u-fokusi-uvagi-pitannya-dostupu-do-publichnoi-informatsii-v-svitli-konventsii-radi-evropi-pro-dostup-do-ofitsiynih-dokumentiv/?fbclid=IwAR30I-yruCvw6sgrhrC9eXyuw65ZKwC4ZvSsCIVjyaKgV5Ka\\_lqC810hvmQ](http://nsj.gov.ua/ua/news/u-fokusi-uvagi-pitannya-dostupu-do-publichnoi-informatsii-v-svitli-konventsii-radi-evropi-pro-dostup-do-ofitsiynih-dokumentiv/?fbclid=IwAR30I-yruCvw6sgrhrC9eXyuw65ZKwC4ZvSsCIVjyaKgV5Ka_lqC810hvmQ)

4. Training sessions for representatives and regional coordinators of the Human Rights Commissioner of the Verkhovna Rada of Ukraine ( the Ombudsperson) were conducted. In 2021, three training sessions on the topic “Convention of the Council of Europe on access to official documents, new rules. Definition of Public Information ” were held for regional representatives of the Ombudsperson on access to public information and the application of the Convention. Each training session lasted 1.5 hours and was attended by about 20 participants.

<https://www.coe.int/uk/web/kyiv/-/improving-access-to-public-information-trainings-of-a-joint-eu-council-of-europe-project-for-representatives-of-the-parliament-commissioner-for-human-> )

5. A series of official explanatory materials for administrators of public information regarding the provisions of the Council of Europe Convention on Access to Official Documents has been published on the official MCIP website.

<https://mkip.gov.ua/content/realizaciya-konvencii-radi-evropi-pro-dostup-do-oficiynih-dokumentiv.html>

9.3 Measures taken by public authorities to set up effective systems for the **management and storage** of official documents that they hold, including information on how such measures facilitate access to official documents.

In accordance with Articles 14 and 15 of the Law of Ukraine "On Access to Public Information", each administrator of public information - a subject of power authority- must create and publish a public information accounting system that reflects the categories of information that are created or collected by such administrators. Also, Article 18 of the Law of Ukraine "On Access to Public Information" provides for the procedure for maintaining the information recording system and establishes that the public information recording system cannot be classified as information with limited access.

Article 10 – Documents made public at the initiative of the public authorities

10.1 Measures taken to encourage transparency by public authorities through the publication of official documents that they hold, notably information on the criteria used by public authorities to determine which documents they should publish **proactively**.

The Law of Ukraine "On Access to Public Information" stipulates a wide range of responsibilities for administrators to inform the public about access to official documents. Thus, Article 3 of the Law of Ukraine "On Access to Public Information" establishes that the right to access public information is guaranteed by the obligation of information administrators to provide and publish information. Also, Article 5 of the Law of Ukraine "On Access to Public Information" provides that access to information is ensured through systematic and prompt disclosure of information in official print media; on official websites on the Internet; on the unified state web portal of open data; at information stands; in any other way.

Article 15 of the Law of Ukraine "On Access to Public Information" defines a wide range of information that administrators must proactively disclose. Also, certain official documents concerning the use of public funds must be published by public information administrators on the Unified Portal for the Use of Public Funds <https://spending.gov.ua/new/> in accordance with the Law of Ukraine "On the openness of public funds use."

10.2 How these official documents are **made public**, in which format and whether any measures are taken to facilitate the public's understanding of these documents.

In accordance with the Law of Ukraine "On Access to Public Information", public information administrators - subjects of power authorities- must publish information about their activities on official websites and in other ways. One of the responsibilities of public information administrators is to disclose information in the form of open data on their websites and the Unified Open Data Portal <https://data.gov.ua/>. Article 10-1 of the Law of Ukraine "On Access to Public Information" provides that information administrators are obliged to provide public information in the form of open data upon request, publish and regularly update it on the unified state web portal of open data and on their websites. The Cabinet of Ministers of Ukraine has approved and regularly updates Resolution No. 835 dated October 21, 2015 "On Approval of the Regulation on Data Sets Subject to Publication in the Form of Open Data". This Regulation provides for a list of data sets that individual administrators of public information must publish in a machine-readable format on a single state resource.

The Resolution of the Cabinet of Ministers of Ukraine dated January 4, 2002 No. 3 approved the Procedure for publishing information on the activities of executive authorities on the Internet.

MCIP monitors the content of the websites of the executive authorities and, based on its results, prepares recommendations for improving the mechanisms for ensuring access to public information twice a year.