

Council of Europe Project
“Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II”
(SFEM-UA – Phase II)

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LEGAL OPINION

on certain provisions (related to freedom of expression, media and access to
information) of the Draft Law on

Civil Code of Ukraine (registration no. 15150)
(Articles 294–299, 321, 324, 326–328, 332, 336, 337, 345, 353)

Division for Co-operation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

Funded within the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” 2023-2026, the Project “[Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II](#)” aims to address urgent needs of major stakeholders and media players in the country. The Project’s objective is “Enabling a pluralistic media environment in Ukraine through harmonisation of legal and policy frameworks in line with European standards” and it is built around three main components:

- (1) Alignment of Ukraine’s framework on media, freedom of expression and freedom of access to information with the European standards;
- (2) Effective implementation of the legal framework governing the protection of journalists, public broadcasting and regulatory authority in line with European standards;
- (3) Effective and efficient communication strategies governing a balanced media coverage and preventing information disorder.

Prepared within the Project “Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II” by Danil Serbin, Council of Europe Consultant.

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LIST OF ABBREVIATIONS

Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings	Directive (EU) 2024/1069
Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services	Directive 2010/13/EU
European Convention on Human Rights	ECHR or the Convention
European Court of Human Rights	EctHR
Universal Declaration of Human Rights	UDHR
Draft Civil Code of Ukraine (registration no. 15150), registered on 9 April 2026	the Draft Law
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)	Regulation (EU) 2016/679 (GDPR)
Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence	Regulation (EU) 2024/1689 (AI Act)

Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of Strategic Lawsuits Against Public Participation (SLAPP), adopted on 5 April 2024	Recommendation CM/Rec(2024)2
Recommendation Rec(2003)13 of the Committee of Ministers to member States on the provision of information through the media in relation to criminal proceedings, adopted on 10 July 2003	Recommendation Rec(2003)13
Recommendation Rec(2004)16 of the Committee of Ministers of the Council of Europe to member States on the right of reply in the new media environment adopted on 15 December 2004	Recommendation Rec(2004)16
Resolution (74) 26 of the Committee of Ministers of the Council of Europe " on the right of reply in the new media environment"	Resolution (74) 26
Resolution of 25 December 1998 no. 1165 (1998) of the Parliamentary Assembly of the Council of Europe "The right to privacy"	Resolution 1165 (1998)
United Nations General Assembly Resolution "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", adopted on 16 December 2005	UN GA Resolution 60/147
Civil Code of Ukraine of 16.01.2003 No. 435-IV	Civil Code of Ukraine

Law of Ukraine No. 2849-IX of 13.12.2022 Law of Ukraine "On Media"
"On Media"

I. Introduction

This Legal Opinion was prepared within the framework of the Council of Europe project "Protection of Freedom of Expression and Media Freedom in Ukraine – Phase II" (hereinafter "the Project") at the request of the Committee of the Verkhovna Rada of Ukraine on Freedom of Speech to the Council of Europe, dated 4 May 2026.

It assesses the compliance of certain provisions of the Draft Civil Code of Ukraine (registration no. 15150), registered in the Verkhovna Rada on 9 April 2026 and adopted in the first reading on 28 April 2026, with Council of Europe standards on freedom of expression and media freedom, the case-law of the European Court of Human Rights, as well as relevant provisions of European Union law in the context of Ukraine's EU accession negotiations.

The subject of analysis comprises Articles 294–299, 321, 324, 326–328, 332, 336, 337, 345 and 353 of the Draft Law, which in part concern media activities, freedom of expression, the right to disseminate information, and personal non-property rights in the digital environment.

This Legal Opinion is based on the text of **Draft Law no. 15150**, published on the official website of the Verkhovna Rada of Ukraine¹.

The letter from the Head of the Verkhovna Rada Committee on Freedom of Speech, Yaroslav Yurchyshyn, requesting this legal review, notes that the Committee draws attention to the fact that the Draft Law, aimed at the comprehensive modernisation of Ukrainian civil legislation, in particular in the area of personal non-property rights in the digital environment, contains a number of provisions whose broad formulation may require additional safeguards to ensure their consistent interpretation and compliance with freedom of expression standards. The Committee expressed concern that certain provisions could potentially be used as a means of pressure on journalists and the media.

II. General Information and Background

The Draft Law proposes the adoption of a new (recodified) Civil Code of Ukraine to replace the currently in force Civil Code of Ukraine, adopted on 16 January 2003. The drafters explain the need to update the general provisions of civil legislation by development of social relations, the emergence of new technologies and normative acts, as well as by European integration processes and the need to implement European standards in various fields.

¹ <https://itd.rada.gov.ua/DraftLawinfo/DraftLaws/Card/69837/>

The Civil Code occupies a central place in the Ukrainian legal system as the primary source of regulation of private relations, which include, inter alia, relations whose subject matter is information, as well as property and non-property rights connected with the dissemination of, and other acts concerning, information. Pursuant to Article 198 of the Draft Law, personal intangible goods include, inter alia, honour, dignity and reputation. Accordingly, the adoption of a new Civil Code will directly affect the legal framework governing the dissemination of information and the protection of personal non-property rights.

The Draft Law introduces a number of innovations compared to the current regulation: the separation of the right of rectification and the right of reply into distinct articles (294 and 295); the introduction of a new mechanism of out-of-court dispute resolution through conciliation (Article 296); the statutory enshrinement of the right to a digital image (Article 321); the right to erasure (Article 328); the right to personal notes (Article 332); the right of a natural person to a digital personal space (Article 336); the right to digital quiet / right to disconnect (Article 337); and – for the first time in Ukrainian civil legislation – the right of a legal person to a digital image (Article 345) and the right of a legal person to a digital personal space (Article 353). These new provisions reflect an attempt to adapt civil law to the state of relations arising in modern society.

At the same time, human rights organisations, journalists and media actors in Ukraine have expressed concerns about certain articles of the Draft Law, pointing to the potential risk of their being used as an instrument of pressure on the free press. In particular, debate has arisen over provisions on prohibition of dissemination of information, the destruction of print runs of publications, and the unrestricted right of reply regardless of the accuracy of the information, among other provisions of the Draft Law.

Since Ukraine is a candidate for accession to the European Union, this analysis has been conducted in the context of the compliance of the Draft Law's provisions with core EU legislative acts, ECtHR judgments and Council of Europe standards on freedom of expression, the right to freely disseminate information, personal non-property rights, and the requirements prohibiting their infringement.

III. Executive summary

The Draft Law, in the part that is the subject of this Legal Opinion, contains several significant positive steps towards aligning domestic civil legislation with contemporary international standards. These include: a clearer delineation between the right of rectification and the right of reply; the statutory codification of certain conclusions and positions of established ECtHR case-law that previously existed only at the level of judicial decisions; and an attempt at comprehensive regulation of digital rights in the new Articles 321, 328, 332, 336, 337, 345 and 353.

The analysis of certain provisions has, however, revealed a number of systemic deficiencies that require remediation. A detailed legal analysis is set out in Section IV; a general summary of the identified potential problems is provided below.

First, several key articles lack a differentiated approach to public figures and private individuals, which is contrary to well-established ECtHR case-law (notably, [Axel Springer AG v. Germany, ECtHR \[GC\], 07.02.2012 \(application no. 39954/08\)](#); [Lingens v. Austria, ECtHR, 08.07.1986 \(application no. 9815/82\)](#)). According to that case-law, the limits of acceptable criticism are wider in respect of a public figure, who must consequently display a greater degree of tolerance to public scrutiny.

Second, a number of provisions have been formulated with insufficient precision, which is contrary to the requirement of the "quality of law" as established in [The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#). The use of open-ended formulations such as "etc.", "law enforcement authority", "personal security" and "material importance" creates a risk of unpredictable and inconsistent application of the law.

Third, certain provisions may carry the risk of a disproportionate interference with freedom of expression and media freedom: in particular, the right to have a document destroyed (Article 294) and the entire print run of a publication (Article 297), the unrestricted right of reply regardless of the accuracy of the information (Article 295), and the data processing regime based exclusively on consent (Articles 336 and 353).

Fourth, the articles regulating the digital rights of natural persons (Articles 321, 327, 328, 332, 336) seem not always internally consistent or consistent with the requirements of the EU Regulation 2016/679 (GDPR). An analogous problem affects the articles on the digital rights of legal persons (Articles 345, 353), which, moreover, extend to legal persons the concepts of "personal space" and "privacy" that in the ECtHR case-law are traditionally oriented towards the protection of the human dignity and autonomy of natural persons.

Fifth, Articles 345 and 353 – insofar as they establish the "consent" of a legal person as the sole basis for data processing – may paralyse regulatory oversight, anti-corruption control, investigative journalism and OSINT analysis. In the absence of exceptions for mandatory public disclosure and journalistic activities, these provisions pose a particular risk of being used by legal persons as a tool to obstruct media investigations.

Sixth, none of the provisions under analysis addresses the risks of the right to protection of personal non-property rights being used as an instrument of SLAPPs (Strategic Lawsuits Against Public Participation), which constitutes a significant shortcoming in light of Ukraine's existing international obligations in the field of countering strategic lawsuits against public participation, as enshrined in Council of Europe Recommendation CM/Rec(2024)2 and the EU Directive 2024/1069. The draft provisions also do not appear to take into account the conclusions set out in the [Legal Opinion On Legislative Changes on the Protection of Public Participation from manifestly unfolded claims or abuse of judicial proceedings in Ukraine \(LEX_2026_09\)](#), prepared by the Council of Europe in February 2026. Therefore, the Council of Europe recommends that the authorities review the draft provisions in the light of the above-mentioned Council of Europe standards and the recommendations contained in the Legal Opinion (LEX_2026_09), with a view to ensuring that the proposed framework cannot be misused to restrict public participation or freedom of expression through abusive litigation.

IV. Legal Analysis of Specific Provisions of the Draft Law

A. Right of Rectification and Right of Reply (Articles 294–295)

Articles 294 and 295 of the Draft Law are the conceptual successors of Article 277 of the current Civil Code of Ukraine, which established the right of reply and the right of rectification of inaccurate information. The separation of these two remedies into distinct articles, as well as the statutory codification of legal positions that previously existed only at the level of judicial practice, could be considered as a positive step in the Draft Law.

At the same time, notwithstanding the positive developments associated with the enshrinement of two separate and autonomous provisions governing the right of rectification and the right of reply as distinct remedies, certain provisions of Articles 294 and 295 of the Draft Law may give rise to scholarly and practical debate.

1. Article 294 – Right of Rectification

Article 294 of the Draft Law is, overall, a significant step forward compared to the current Article 277 of the Civil Code of Ukraine and is, in general terms, compatible with the requirements of the ECHR and ECtHR judgments. In the meantime, further refinement of certain provisions of this article could be considered.

Article 294 of the Draft Law contains a provision to the effect that disseminated information may not infringe the presumption of innocence. According to the Recommendation Rec(2003)13 of the Committee of Ministers of the Council of Europe to member states on the provision of information through the media in relation to criminal proceedings, the media have the right to inform the public by virtue of the public's right to receive information, including on matters of public interest, under Article 10 of the Convention, and this is their professional duty to do so. At the same time, the rights to the presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention are fundamental requirements to be respected in any democratic society. Having regard to the potentially conflicting interests protected by Articles 6, 8 and 10 of the Convention and the need to strike a balance between these rights taking into account the facts of each individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring compliance with the Convention's obligations, one of the principles of Recommendation Rec(2003)13 is the "Presumption of Innocence" principle, according to which views and information relating to on-going court proceedings may be communicated or broadcast through the media only when this does not risk prejudicing the presumption of innocence of the suspect or accused.

Equally, the balancing of the public's right to receive information of public interest, including in relation to court proceedings, with the right to the presumption of innocence has been the subject of assessment by the ECtHR in a number of judgments, notably [Dupuis and Others v. France, ECtHR, 07.06.2007 \(application no. 1914/02\)](#) and [Campos Damasio v. Portugal, ECtHR, 24.04.2008 \(application no. 17107/05\)](#). In such cases the Court determines, inter alia, whether the public's interest in being informed outweighs the obligation to respect the right to the presumption of innocence, and whether, in the event of a violation of the presumption of innocence, holding the person responsible constitutes a proportionate interference with the exercise of his or her freedom of expression.

At the same time, the question of rectification of inaccurate information falls within the jurisdiction of a civil court. Accordingly, establishing in civil proceedings the falsity of information alleging that a person has committed a criminal offence may risk usurping the jurisdiction of the criminal court. This is at odds with Articles 6 and 7 of the ECHR ("Right to a fair trial", "No punishment without law").

It is recommended to further develop this provision with due regard to the rules of procedural law, in particular by delineating the competence of the civil and criminal courts in resolving matters connected with the presumption of innocence.

Article 294 of the Draft Law also envisages the possibility of destroying the document in which the inaccurate information is recorded as a remedy. This approach could be considered as excessive and inappropriate for the following reasons: first, information is not equivalent to the document in which it is recorded, and the destruction of the document is not equivalent to rectification of the information and does not reach maximum number of persons who previously received the disseminated inaccurate information; second, such a document may constitute evidence under procedural law, and its destruction would in effect amount to the destruction of evidence. The ECtHR in [Grafov v. Ukraine, ECtHR, 18.12.2018 \(application no. 4809/10\)](#) noted that the requisite balance will not be achieved if the individual concerned is made to bear an individual and excessive burden. The destruction of the document, as an additional (sequential) element of the rectification of inaccurate information, appears to be excessive, since such destruction cannot be regarded as achieving the requisite balance.

Article 294 of the Draft Law provides that the communication of inaccurate information about a person in letters, statements, complaints and other forms of address to law enforcement authorities for the purpose of verifying such information does not constitute dissemination of information. Ukrainian legislation does not provide a definition of the term "law enforcement authority" and does not establish the range of bodies (agencies, services) that fall within this category. The current Ukrainian legislation does use the term "law enforcement body", which encompasses the prosecution service, the National Police, the Security Service, the National Anti-Corruption Bureau of Ukraine, and others. Reports by third parties concerning possible offences are directed not only to law enforcement bodies but also to other public authorities and their officials, including those exercising supervisory functions over compliance with the law, which under the current legislation are not classified as law enforcement authorities. This could create a risk of ambiguous application of this provision. The ECtHR in [Olsson v. Sweden, ECtHR, 24.03.1988 \(application no. 10465/83\)](#) held that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The use of the term "law enforcement authority" without further elaboration gives rise to uncertainty as to whether other supervisory bodies and persons to whom individuals may report information about others for the purpose of verification also fall within the scope of this term.

Furthermore, in the context of Article 294 of the Draft Law, which provides that value judgments are not subject to rectification and/or proof of their accuracy, it should be noted that freedom of expression is not an absolute right, and accordingly value judgments must also have a factual basis and must not be excessive. The ECtHR in [Pfeifer v. Austria, ECtHR, 15.11.2007 \(application no. 12556/03\)](#) found that the absence of a factual basis in value judgments leads to a violation of the right to respect for private and family life (Article 8 of the ECHR). At the same time, within the framework of that article, account should also be taken of the specific features of information dissemination concerning public figures and the elevated standard of public interest, as set out in Resolution 1165 (1998) as well as in the ECtHR's judgment in [Axel Springer AG v. Germany, ECtHR \[GC\], 07.02.2012 \(application no. 39954/08\)](#), in which the Court established a system of criteria for assessment depending on the public-figure status of the person. The absence of provisions on the elevated public interest in public figures, and consequently the more active dissemination of information about such persons, could create a risk of SLAPP actions (Strategic Lawsuits Against Public Participation) – a form of abuse of rights whereby proceedings are brought not for the purpose of restoring a right (rectifying inaccurate information, etc.) but with a view to obstructing the activities of journalists (their investigative work) and exerting additional judicial pressure. The absence, within the article, of the foundations of a mechanism to prevent SLAPP actions is inconsistent with the EU Directive 2024/1069.

Accordingly, it is recommended to add provisions governing the specific features of information dissemination and rectification in relation to public figures and public authorities to Article 294 of the Draft Law. It is also recommended to add a provision defining the content of the term "value judgments" and the criteria of excessiveness, and to supplement the article with a provision that would preclude the court from granting interim measures in the form of a prohibition on media activities or restrictions on the activities of a journalist prior to the entry into force of a court judgment.

2. Article 295 – Right of Reply

The right of reply, as enshrined in Article 295 of the Draft Law, is not a novelty in Ukrainian legislation – such a right is already contained in Article 43 of the Law of Ukraine "On Media". However, the content of the proposed provision differs substantially from that of Article 43 of the Law of Ukraine "On Media", which necessitates alignment between these provisions and the introduction of corresponding amendments.

Article 295 of the Draft Law provides that a person whose personal right has been infringed as a result of the dissemination of information about him or her has a right of reply, and that the right of reply does not depend on the accuracy of the information disseminated. The article contains no qualifying criteria whatsoever (inaccuracy, defamatory character, etc.), stipulating only the ground – "infringement of a personal right". Under such a formulation, any dissemination of information, irrespective of its accuracy, level of criticism, the presence of a value judgment or public significance, may automatically give rise to a claim for publication of a reply.

This approach potentially transforms the right of reply into a mechanism for the systematic compulsion of media to publish content and for interference with editorial policy. The ECtHR in [Eker v. Turkey, ECtHR, 24.10.2017 \(application no. 24016/05\)](#) stressed that the State's positive obligations to guarantee freedom of expression do not extend to granting individuals or organisations an unrestricted right of access to the media for the purpose of advancing their views, and that the State must ensure that a denial of access to the media does not constitute an arbitrary and disproportionate interference with freedom of expression. The EU Directive 2010/13/EU (Article 28) provides that the right of reply must be conditional upon harm to legitimate interests, specifically honour and reputation, resulting from the presentation of untrue facts. Resolution (74) 26 likewise states that the person concerned must have a real opportunity to refute untrue facts. Similarly, the Recommendation Rec(2004)16 of the Committee of Ministers of the Council of Europe to member states on the right of reply in the new media environment also indicates that the right of reply is exercised in respect of information containing untrue facts that infringe personal rights.

Furthermore, Article 295 of the Draft Law contains no circumstances in which the person who disseminated the information has a lawful right to refuse publication of the reply. In particular, the Appendix "Minimum rules concerning the right of reply in the press, radio, television and other periodical media" to Resolution (74) 26 provides that national law may make provision for refusal to publish a reply, inter alia, on the ground that the request to publish the reply was not submitted to the media within a sufficiently short period. In this regard, Article 295 of the Draft Law also contains no temporal limitations as to when the interested person may exercise the right to request publication of a reply, or within what period following dissemination such a request must be acted upon, which creates an additional risk of abuse of the right established by this article of the Draft Law, given the absence of such limitations. The ECtHR in [Eker v. Turkey, ECtHR, 24.10.2017 \(application no. 24016/05\)](#) also emphasised that news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest. The absence of time-limits also runs counter to the requirement of the quality of law (foreseeability) under ECtHR case-law ([The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#)).

In light of the foregoing, it is recommended that Article 295 of the Draft Law to be supplemented with appropriate qualifying criteria, as well as a deadline for exercising the right of reply and the circumstances in which publication of a reply may be refused.

B. Right of Conciliation, Prohibition on Dissemination of Information and Compensation for Harm (Articles 296–299)

1. Article 296 – Right of Conciliation

Ukraine already has in force the Law of Ukraine "On Mediation", which regulates the procedure for conducting mediation as an out-of-court dispute resolution process; however, such mediation is based on a corresponding agreement to conduct it. Dispute resolution may also take place within the framework of settlement agreements in court proceedings. In contrast, Article 296 of the Draft Law is a novel provision that introduces the voluntary out-of-court resolution of a conflict connected with the dissemination of inaccurate information by means of an apology as a method of conciliation. This approach is consistent with UN GA Resolution 60/147 (§ 22(e)), pursuant to which satisfaction may include the offering of a public apology, including acknowledgment of the facts and acceptance of responsibility.

Part 1 of Article 296 of the Draft Law restricts the class of persons who may initiate conciliation to the person who disseminated the inaccurate information, to the exclusion of the injured party or a person who has infringed a personal right by means other than the dissemination of information. This approach effectively deprives other persons of the possibility of initiating conciliation as a means of resolving the disputed situation and restoring the infringed rights. The ECtHR in [Cihan Öztürk v. Turkey, ECtHR, 09.06.2009 \(application no. 17095/03\)](#) indicated that the national courts could have considered other sanctions, such as an apology or the publication of their judgment finding the statements defamatory.

Parts 3 and 4 of Article 296 of the Draft Law further provide that conciliation does not preclude the application of other means of protecting personal rights and that, when examining a case, the court takes account of conciliation as a circumstance "of material importance". The concept of "material importance" does not disclose its substance, which leads to uncertainty as to what legal consequences in fact ensue from an apology. The ECtHR in [The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#) emphasised that a norm cannot be regarded as a "law" if it is not formulated with sufficient precision. Therefore, it is recommended to clarify Part 4 of Article 296 of the Draft Law by disclosing the legal consequences of the "materiality" of an apology as a circumstance.

Part 2 of Article 296 of the Draft Law provides for the possibility of addressing a conciliation proposal to family members or close relatives in the event of the death or judicial declaration of death of a natural person. As noted above, a norm cannot be regarded as a "law" if it is not formulated with sufficient precision. The proposed wording does not determine the order of priority for accepting the conciliation proposal, does not resolve the question of whether the refusal of some persons precludes the making of proposals to others, and is not aligned with Article 325 of the Draft Law, which sets out the list of persons holding "post-mortem personal rights". ECtHR case-law confirms that the protection of the feelings of the relatives of a deceased person falls within the scope of Article 8 of the Convention. It is accordingly advised to elaborate Part 2 of Article 296 of the Draft Law and to align it with Article 325 of the Draft Law.

2. Article 297 – Right to Seek Prohibition on Dissemination of Information

Article 297 of the Draft Law in substance reproduces Article 278 of the current Civil Code of Ukraine ("Prohibition on dissemination of information that infringes personal non-property rights"), providing for the remedy of prohibition on dissemination in respect of both information already published and information whose dissemination is anticipated in the future.

Part 1 of Article 297 of the Draft Law provides that where a personal right has been infringed in a copy of a media outlet, film, programme or the like that is being prepared for release, the court may prohibit their dissemination. The article does not, however, impose any obligation on the claimant to establish an urgent need for such a prohibition, nor does it require the court to examine the public interest in the publication of the information. The ECtHR in [Mosley v. the United Kingdom, ECtHR, 10.05.2011 \(application no. 48009/08\)](#) and [Observer and Guardian v. the United Kingdom, ECtHR, 26.11.1991 \(application no. 13585/88\)](#) emphasised that prior restraints on the dissemination of information call for the most careful scrutiny, particularly in relation to the press, since news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest. The Court indicated that a prior restraint is justified only where a balance is struck between the personal right and the general public interest. The absence of such a balance in Article 297 creates a risk of its being used as an instrument of censorship. It is recommended to supplement the article with a requirement for the claimant to establish an urgent need for the prohibition and the absence of any violation of the public interest in important information. The ECtHR judgments cited above indicate that while a prior restraint is in principle distinct from a prohibition on material already published, both are justified only where a balance is struck between the personal right and the general public interest. The existence or absence of a public interest, as well as the balance between the public interest and personal rights, including the right to privacy, must be determined by the court on a case-by-case basis.

As previously noted in the commentary on Article 294 of the Draft Law, there are no provisions governing the specific features of information dissemination concerning public figures and public authorities. In [Lingens v. Austria, ECtHR, 08.07.1986 \(application no. 9815/82\)](#), the Court held that the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 enables the reputation of others – that is to say, of all individuals – to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues. The absence of such provisions in the article of the Draft Law may create a risk that Part 1 of Article 297 will be applied not as a norm protecting a personal right but as a lever of censorship. In light of the foregoing, it is recommended to supplement the article with provisions establishing a prohibition on the dissemination of information conditional on the claimant's demonstration before the court of an urgent need for such a prohibition and the absence of any violation of the public's interest in important information (the public interest), taking into account in particular the elevated public interest in public figures.

Part 2 of Article 297 of the Draft Law provides that, where it is impossible to remedy the infringement, the court may seize the print run (circulation) of a media outlet, publication, film or the like for the purpose of their destruction. The destruction of the entire print run on account of an infringement in a single article is manifestly contrary to the principle of proportionality as enshrined in ECtHR case-law ([Axel Springer AG v. Germany, ECtHR \[GC\], 07.02.2012 \(application no. 39954/08\)](#)). It is recommended to revise Part 2 of Article 297 of the Draft Law with due regard to the principle of proportionality.

3. Articles 298–299 – Compensation for Pecuniary and Non-Pecuniary Harm

Article 298 of the Draft Law is the successor to Article 280 of the current Civil Code of Ukraine and contains a clarification that harm is to be compensated in full. Article 299 of the Draft Law, the counterpart to Article 298, enshrines the right to compensation for non-pecuniary harm and introduces the novelty of the possibility of a public apology by a public authority, which is consistent with the requirements of UN GA Resolution 60/147 (§ 22(e)).

Both articles, however, share a common deficiency: they contain no systematic cross-references to the adjacent chapters of the Draft Law governing liability for harm, nor do they enshrine the requirement of proportionality between the quantum of compensation and the nature of the infringement. According to ECtHR case-law in [Axel Springer AG v. Germany, ECtHR \[GC\], 07.02.2012 \(application no. 39954/08\)](#); [Von Hannover v. Germany \(no. 2\), ECtHR \[GC\], 07.02.2012 \(application no. 40660/08\)](#), when determining the quantum of compensation, account must be taken of whether the information disseminated contributed to a debate of public interest and whether the injured party is a public figure. Moreover, Chapter 91 of the Draft Law ("Liability for Harm", Article 1412) provides for the possibility of reducing the quantum of compensation where the victim, without good reason, failed to take reasonable steps to prevent an increase in the harm, whereas Articles 298–299 speak only of compensation in "full", which gives rise to an internal inconsistency. The principle of proportionality and an individual approach to determining the quantum of compensation must also be applied, as must the consideration that compensation must enable a person to genuinely restore his or her rights. This is consistent with the ECtHR's position in [Shevanova v. Latvia, ECtHR \[GC\], 07.12.2007 \(application no. 58822/00\)](#), in which the Court recalled that Article 8 of the ECHR, like any other provision of the Convention or its Protocols, must be interpreted so as to guarantee not rights that are theoretical or illusory, but rights that are practical and effective. It is accordingly recommended to establish the correspondence between Articles 298–299 and the adjacent chapters of the Draft Law, as well as to enshrine the requirement to apply the principle of proportionality, taking into account the aspect of public interest in the information disseminated and the status of the injured party as a public figure.

C. Right to Honour and Reputation (Article 324)

Article 324 of the Draft Law provides, for the first time at the legislative level, definitions of the concepts of "honour" and "reputation", linking them to the concept of "boni mores" enshrined in Article 6 of the Draft Law. This approach to defining concepts enhances the clarity of the law and is consistent with the ECtHR's position, notably in [The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#), according to which a provision must be formulated with sufficient precision.

Part 2 of Article 324 of the Draft Law defines reputation exclusively as "the social assessment of a person's professional and/or business qualities acquired by the person". Yet according to ECtHR case-law, a person's right to the protection of his or her reputation falls within Article 8 as part of the right to respect for private life, and a person's reputation constitutes part of his or her personal identity and psychological integrity ([Pfeifer v. Austria, ECtHR, 15.11.2007 \(application no. 12556/03\)](#)). Reputation is accordingly not limited to professional and/or business qualities. Therefore, it is recommended that the definition of reputation in the Draft Law be broadened without restricting it solely to professional and business qualities.

Part 3 of Article 324 of the Draft Law provides that a natural person "has the right to shape, modify and/or use his or her reputation in various spheres of activity". However, if reputation is a social assessment, it is society itself – and not the natural person – that shapes and modifies it, on the basis of that person's conduct. A person may of his or her own volition only take certain actions that may potentially influence the shaping and modification of the social assessment of that person, which forms his or her reputation. In this context, the use of reputation may occur as the use of a personal good for the achievement of various objectives, for example: the promotion of goods and services, the enhancement of consumer trust in a product, etc.

D. Right to Information and Right to Personal Information (Articles 326–327)

Article 326 of the Draft Law is the direct successor to Article 302 of the current Civil Code of Ukraine, with minor amendments. The Draft Law supplements the list of rights with such actions as the creation of information and its protection.

Article 326 provides that restrictions on the right to information are permissible "in the cases determined by the Constitution of Ukraine, this Code and/or another law". This approach in effect may open the possibility of introducing additional grounds and purposes for restricting the right to information beyond the exhaustive list established by Article 34 of the Constitution of Ukraine and Article 10 of the ECHR. The grounds for restriction of the right established in the Constitution and the ECHR coincide: restrictions are permitted in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, and for maintaining the authority and impartiality of the judiciary. Therefore, it is recommended that this provision brought into conformity with this exhaustive list.

Article 326 of the Draft Law provides that a person who disseminates information from official sources (public authorities, public electronic registers, official websites, reports, transcripts, etc.) is under no obligation to verify its accuracy. The use of the word "etc." renders the definition of "official sources" open to interpretation, which is inconsistent with ECtHR case-law on the clarity and foreseeability of the law ([The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#)). Therefore, it is recommended to improve the concept of "official sources" and make it more specific.

Part 3 of Article 326 provides that a natural person who disseminates information is obliged to verify its accuracy. However, this provision establishes no standard or rules for such verification. The ECtHR in [Bladet Tromsø and Stensaas v. Norway, ECtHR \[GC\], 20.05.1999 \(application no. 21980/93\)](#) noted that the guarantee of Article 10 for journalists reporting on matters of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. Articles 3 and 6 of the Draft Law establish the principles of good faith and boni mores as foundations of private law. It is recommended to improve Part 3 of Article 326 by enshrining a verification standard as an obligation to carry it out in good faith, with due care and in accordance with boni mores.

2. Article 327 – Right to Personal Information

Article 327 of the Draft Law is a sequel of sorts to Article 326 and establishes a right in respect of a specific type of information – information relating to the person him- or herself. The article is largely declaratory in character and contains no specification as to the range of information that may be recognised as personal, which is broadly grounded in the wide interpretation of the concept of "private life" in ECtHR case-law ([Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, ECtHR \[GC\], 27.06.2017 \(application no. 931/13\)](#)).

Part 1 of Article 327 defines personal information as information that, "to the extent that it creates a threat to the personal security of the natural person". The criterion of "personal security" does not answer the question of what kind of security is intended: security of life, property security, etc. This is contrary to the requirement of legal certainty ([The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#)). It is recommended that the content of the concept of "personal security" be made more specific.

Articles 321, 327 and 336 of the Draft Law evidence a gradual convergence of the concepts of "personal information" and "personal data", which may give rise to legal uncertainty as to the applicability of the rules of the EU Regulation 2016/679 (GDPR) to the protection of personal rights. It is recommended to define the relationship between the protection of personal data and other personal information in order to prevent their conflation.

Part 2 of Article 327 establishes the right of a person to request that personal information about him or her be provided in an accessible, complete, accurate and up-to-date form, but does not define the range of subjects bearing the corresponding obligation or the time-limits for providing such information. The ECtHR in [Airey v. Ireland, ECtHR, 09.10.1979 \(application no. 6289/73\)](#) emphasised that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. Without identifying the obligated subjects and time-limits, the article remains declaratory.

E. Digital Rights of Natural Persons: Digital Image, Right to Erasure, Personal Notes and Digital Privacy (Articles 321, 328, 332, 336)

1. Article 321 – Right to a Digital Image

Article 321 of the Draft Law is a novelty that has no direct analogue in the law of other states. It represents an attempt to combine in a single provision the issues of GDPR, deepfake, AI content labelling and image rights, designating such a combination as a "digital image" and conferring on it the status of an independent object of personal non-property rights. Such novelty may give rise to a number of observations and questions, answers to which are at this stage difficult to provide without broad public debate and the application of scholarly methodology.

Part 1 of Article 321 defines a digital image as the totality of any forms of representation and identification of a person in the digital environment, such as "user accounts, ..., personal data, ... etc." The use of the word "etc." and of an open-ended list creates a situation in which any user who encounters the digital image of a particular person will be unable to foresee the lawfulness of his or her actions. Furthermore, the content of the term "use" in Part 2 of Article 321 also remains undefined. This is contrary to the requirements of clarity and foreseeability of the law ([The Sunday Times v. The United Kingdom \(no. 1\), ECtHR, 26.04.1979 \(application no. 6538/74\)](#)). Therefore, it is recommended that an exhaustive list of the forms of a digital image and the content of the concept of "use" are further defined.

Article 321 of the Draft Law contains no exceptions for the use of a digital image in the context of public interest in relation to public figures. As noted above, the ECtHR has repeatedly emphasised the need to strike a balance between personal rights and public interests. Accordingly, the use of a digital image cannot be restricted by a person where such use forms part of a debate of public interest and the person in question holds public-figure status.

Article 321 of the Draft Law defines personal data as a component of the digital image. By contrast, the EU Regulation 2016/679 (GDPR) defines an online identifier as a type of personal data, and not vice versa, and establishes its own extensive list of data processing operations. This approach may lead to legal uncertainty as to the applicability of the rules of the EU Regulation 2016/679 (GDPR) to the protection of the digital image. In light of the foregoing, it is recommended to define the relationship between the protection of personal data and the digital image.

Part 4 of Article 321 provides that the creation of digital content that realistically imitates a person's image, voice or manner of behaviour is permissible only with that person's consent. The ECtHR in [Eon v. France, ECtHR, 14.03.2013 \(application no. 26118/10\)](#) emphasised that satire is a form of artistic expression and social commentary, and any interference with an artist's right to use such mode of expression must be scrutinised with particular care. It is recommended that the provision be supplemented with exceptions for works that constitute a form of artistic expression and social commentary.

2. Article 328 – Right to Erasure

Article 328 of the Draft Law is an adaptation of Article 17 of the EU Regulation 2016/679 (GDPR) ("Right to erasure ('right to be forgotten')"). The statutory enshrinement of the right to be forgotten is a positive step. Article 328, however, provides for the erasure of information on grounds of its lack of relevance or the loss of public interest, without establishing criteria for relevance and interest, which gives rise to legal uncertainty and inconsistency with Article 17 of the EU Regulation 2016/679 (GDPR). The ECtHR in [M.L. and W.W. v. Germany, ECtHR, 28.06.2018 \(application nos. 60798/10 and 65599/10\)](#) held that the rights of persons who have become the subject of content available on the internet must be balanced against the right of the public to be informed about past events and contemporary history, in particular through digital press archives. Beyond its primary function, the press also plays a secondary but nonetheless valuable role in maintaining archives containing news that has previously been reported and making them accessible to the public. In this context, the ECtHR emphasises the substantial contribution of internet archives to the preservation and accessibility of news and information. Such archives constitute an important source for education and historical research, particularly because they are readily accessible to the public and are generally free of charge.

In light of the foregoing, it is recommended to establish criteria of relevance and interest and harmonise the Article 328 of the Draft Law with the requirements of Article 17 of the EU Regulation 2016/679 (GDPR).

3. Article 332 – Right to Personal Notes

Article 332 of the Draft Law is a novelty in Ukrainian civil legislation and for the first time comprehensively enshrines a person's right to personal notes, including those created in electronic form. Such notes include: documents, memoranda, records, diaries, personal archival materials, images, audio and video recordings, correspondence by instant messaging, SMS and MMS messages, and other materials containing personal information. This approach is broadly consistent with international standards for the protection of private life and the contemporary development of digital communications. In particular, Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, and Article 8 of the European Convention on Human Rights and Fundamental Freedoms guarantee to every person the right to respect for private life and correspondence.

This approach is broadly consistent with the standards protecting private correspondence and the contemporary ECtHR case-law ([Barbulescu v. Romania, ECtHR \[GC\], 05.09.2017 \(application no. 61496/08\)](#); [Halford v. the United Kingdom, ECtHR, 25.06.1997 \(application no. 20605/92\)](#); and [Copland v. the United Kingdom, ECtHR, 03.04.2007 \(application no. 62617/00\)](#)), which confirms that electronic communications fall within the guarantees of Article 8 of the Convention.

Article 332 of the Draft Law, however, contains a number of deficiencies. First, the article does not define the criteria of the "public character" of information, which creates uncertainty as to the distinction between private and public information and is contrary to the principle of legal certainty. Second, Part 3 of Article 332 of the Draft Law gives rise to a potential conflict between the rights of the parties to correspondence, since each of them is simultaneously a subject of the right to privacy and a bearer of information. ECtHR case-law ([Barbulescu v. Romania, ECtHR \[GC\], 05.09.2017 \(application no. 61496/08\)](#)) proceeds from the premise that the right to confidentiality belongs to all parties to a communication. Third, Part 6 of Article 332 of the Draft Law provides for the possibility of access to personal notes by court order for the purposes of criminal proceedings, but contains no clear criteria for access, limits on interference or safeguards. The ECtHR insists on the compliance of surveillance measures with the criteria of necessity and proportionality. Fourth, Article 332 of the Draft Law does not establish a special protection regime for particularly sensitive information (medical or psychological data), which is inconsistent with the standards established in [Z v. Finland, ECtHR, 25.02.1997 \(application no. 22009/93\)](#) and [S. and Marper v. the United Kingdom, ECtHR \[GC\], 04.12.2008 \(application nos. 30562/04 and 30566/04\)](#).

4. Article 336 – Right to a Digital Personal Space (Digital Privacy)

Article 336 of the Draft Law enshrines for the first time in Ukrainian civil legislation a person's right to a digital personal space (digital privacy), which encompasses digital correspondence, communication metadata, search queries, internet browsing history, geolocation data and data generated by artificial intelligence systems. This approach is broadly consistent with international standards for the protection of private life. The inclusion of metadata, search queries and geolocation data within the scope of digital privacy is consistent with ECtHR case-law ([Uzun v. Germany, ECtHR, 02.09.2010 \(application no. 35623/05\)](#); [Benedik v. Slovenia, ECtHR, 24.04.2018 \(application no. 62357/14\)](#)) Article 336 of the Draft Law, however, has a number of deficiencies.

First, Part 2 of Article 336 of the Draft Law provides that data processing is permissible only with the consent of the person concerned, which is a significantly narrower approach than the system of lawful grounds for personal data processing under the EU Regulation 2016/679 (GDPR). Article 6 of the EU Regulation 2016/679 (GDPR) provides for six lawful grounds for processing, including the performance of a contract, compliance with a legal obligation, and the protection of the public interest, among others. Establishing "consent" as the sole ground may create substantial problems for the functioning of open data systems, investigative journalism, anti-corruption control and OSINT tools.

Second, the article contains no exceptions whatsoever in respect of the processing of data of public figures or information from public state registers, which, in conjunction with Articles 321 and 332 of the Draft Law, may create excessive restrictions on publicly available information, contrary to ECtHR case-law.

Third, the absence in Article 336 of the Draft Law of procedural safeguards governing State access to digital data and the absence of a special protection regime for journalists, lawyers and human rights defenders are contrary to the standard of "strict necessity" established in [Szabó and Vissy v. Hungary, ECtHR, 12.01.2016 \(application no. 37138/14\)](#), and the position of the ECtHR Grand Chamber in [Big Brother Watch and Others v. the United Kingdom, ECtHR \[GC\], 25.05.2021 \(application nos. 58170/13, 62322/14 and 24960/15\)](#).

Fourth, the article contains no safeguards in accordance with the EU Regulation 2024/1689 (EU AI Act) in respect of data generated by artificial intelligence systems.

F. Right to Digital Quiet / Right to Disconnect (Article 337)

Article 337 of the Draft Law enshrines for the first time in Ukrainian civil legislation a person's right to digital quiet, i.e. the right not to respond to calls, messages or e-mails outside working hours or hours determined by contract (the "right to disconnect"). This approach is consistent with the legislation of several EU Member States (France, Spain, Portugal), as well as with Article 8 of the ECHR and Article 31(2) of the Charter of Fundamental Rights of the European Union.

Part 1 of Article 337 of the Draft Law extends the right to digital quiet to all natural persons without any exceptions for public servants or persons performing State or local government functions. This may create a risk of the right to digital quiet being used as a basis for avoiding communication with journalists, the public or requesters of public information. [Magyar Helsinki Bizottság v. Hungary, ECtHR, 08.11.2016 \(application no. 18030/11\)](#) confirmed that the right of access to information of public interest is a component of freedom of expression. The absence of exceptions for public figures may create a conflict between the right to digital quiet and the principle of openness of public authority activities.

Part 2 of Article 337 of the Draft Law provides that the exercise of the right to digital quiet may not serve as a basis for legal liability or other adverse consequences. The article does not, however, contain a procedural mechanism for protecting a person from covert forms of adverse consequences (deterioration of working conditions, informal discrimination, denial of promotion), and therefore risks remaining declaratory.

Part 3 of Article 337 of the Draft Law allows for the restriction of the right to digital quiet "in the cases determined by contract", which in effect permits a contractual limitation of a personal non-property right without establishing limits or safeguards. Meanwhile, in most EU Member States, the right to disconnect is enshrined as a minimum standard from which a complete waiver by contract is not permitted.

In its current wording, the article in effect places the entire burden of realising the right on the person concerned, who must independently decide whether to respond to messages or calls. By contrast, the civil legislation of other EU Member States, for example France and Portugal, places the primary emphasis on the employer's obligation to refrain from requiring the employee's constant availability. Moreover, Article 337 does not link the right to digital quiet to the protection of psychological health, which is contrary to contemporary EU practice, which regards constant digital availability as a risk factor for psychological well-being.

G. Digital Rights of Legal Persons: Digital Image and Digital Privacy (Articles 345, 353)

1. Article 345 – Right of a Legal Person to a Digital Image

Article 345 of the Draft Law is the counterpart to Article 321 of the Draft Law (the right of a natural person to a digital image) and extends an analogous regime to legal persons. In comparison with Article 321, Article 345 substitutes the concept of "personal data" with a reference to "electronic signatures, seals and other forms of individualisation in the digital environment", thereby reflecting the specific nature of legal persons. The idea itself of statutory enshrinement of the digital identity of legal persons is a positive one; however, the implementation of this idea in the proposed wording gives rise to a number of significant observations.

Part 1 of Article 345 defines the digital image of a legal person as "any forms of its representation in the digital environment", including user accounts, personal pages, digital profiles, including on social networks and in electronic governance systems, as well as electronic signatures, seals and other forms of individualisation. This definition is excessively broad and imprecise.

First, the concept of "any forms of representation" in conjunction with an open-ended list ("in particular", "other forms") does not meet the requirement of legal certainty. As the ECtHR has repeatedly noted above, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the person – if need be, with appropriate legal advice – to foresee the consequences of his or her actions. In the presence of an open-ended list, any third party that refers to a legal person in the digital space cannot be certain whether its actions are lawful from the perspective of that legal person's rights to a digital image.

Second, unlike natural persons, legal persons are subject to more extensive public disclosure obligations, transparency requirements or public scrutiny. The proposed wording contains no exceptions whatsoever for mandatory public disclosure, thereby risking conflict with the requirements of other legislative acts that oblige legal persons to disclose certain information mandatorily.

Part 2 of Article 345 of the Draft Law grants a legal person the right to freely create and/or use its digital image, to grant authorisation for its use, and the right to demand the rectification, restriction of dissemination or deletion of inaccurate information relating to it.

The right to demand the rectification, restriction of dissemination or deletion of inaccurate information is an adaptation of the conceptual framework of the EU Regulation 2016/679 (GDPR). However, this Regulation expressly provides that it applies exclusively to natural persons. Accordingly, transposing the data subject rights regime to legal persons within a Civil Code without a corresponding systematic justification may lead to contradictions in legal practice.

At the same time, a positive element is the direct link between the right of rectification and the criterion of the accuracy of the information. Unlike Article 295 of the Draft Law (right of reply), which does not condition the right of reply on the accuracy of the information disseminated, Article 345 of the Draft Law in Part 2 links the relevant right precisely to the criterion of the inaccuracy of information, which is more consistent with ECtHR standards.

2. Article 353 – Right of a Legal Person to a Digital Personal Space (Digital Privacy)

Article 353 of the Draft Law extends to legal persons the right to a digital personal space (digital privacy), which for natural persons is enshrined in Article 336 of the Draft Law. The concept of "privacy" is inextricably linked to human dignity and personal autonomy. Article 8 of the ECHR protects "private and family life", "home" and "correspondence". While the ECtHR in several cases has extended certain guarantees of Article 8 to legal persons – in particular with regard to protection from unwarranted searches of business premises – the scope of such guarantees is substantially narrower than for natural persons and does not encompass the "digital personal space" in the meaning attributed to this article of the Draft Law.

Part 1 of Article 353 declares that a legal person has a right to a digital personal space (digital privacy). The very use of the expression "personal space" in relation to a legal person is legally incorrect, since legal persons do not have a "personality" in the sense applicable to natural persons – they are artificial legal constructs.

Part 2 of Article 353 of the Draft Law provides that data processing relating to the digital image of a legal person is permissible "only with its consent and in compliance with the requirements of the law". This provision reproduces the analogous problem of Article 336 of the Draft Law (in respect of natural persons) and is even more problematic in the context of legal persons.

First, Article 6 of the EU Regulation 2016/679 (GDPR) establishes equally valid lawful grounds for the processing of personal data, of which "consent" is only one. Establishing "consent" as the sole ground is contrary to this system; and since the provisions of the EU Regulation 2016/679 (GDPR) do not apply to legal persons as data subjects, the Draft Law effectively introduces for them a more restrictive regime than that established by the EU Regulation 2016/679 (GDPR) for natural persons, which is conceptually inconsistent.

Second, the processing of data concerning legal persons (including data about their digital image) is an inherent component of a number of public functions and lawful activities: the maintenance of the Unified State Register; the exercise of regulatory oversight and compliance monitoring; investigative journalism; and the verification of counterparty data prior to the conclusion of commercial agreements. Requiring the "consent" of the legal person for the carrying out of all such data processing operations – including the processing of publicly available data from official registers – is practically unworkable.

Third, ECtHR case-law in cases relating to access to information about legal persons ([Magyar Helsinki Bizottság v. Hungary, ECtHR, 08.11.2016 \(application no. 18030/11\)](#)) consistently confirms that the public interest in obtaining information about entities conducting publicly significant activities constitutes a lawful basis for the dissemination of the relevant information.

Part 5 of Article 353 of the Draft Law provides that "the grounds and procedure for restricting the right of a legal person to a digital personal space (digital privacy) shall be determined by this Code and/or another law".

The general construction is consistent with the requirement of Article 8 of the ECHR regarding the lawfulness of restrictions on the right to privacy. However, the provision is purely referential and contains no substantive requirements for restrictions whatsoever: neither a criterion of legitimate aim, nor a requirement of necessity in a democratic society, nor the principle of proportionality. In respect of legal persons, where the threshold criteria for lawful interference are lower than for natural persons, the complete absence of substantive requirements in the provision risks leaving room for disproportionate restrictions without a corresponding legal control mechanism.

V. Conclusions and Recommendations

Draft Law no. 15150, in the part that is the subject of this Opinion, reflects the general positive trend towards the modernisation and improvement of Ukrainian civil legislation. The statutory enshrinement of individual provisions in separate articles, the codification of established case-law, and the attempt at a comprehensive regulation of the digital rights of persons in the new Articles 321, 328, 332, 336, 337, 345 and 353 are steps that move Ukraine towards compliance with the standards of the Council of Europe and the European Union.

In the field of classical personal non-property rights, the Draft Law represents an important advance: the separation of the right of rectification and the right of reply into distinct Articles 294 and 295 removes a conceptual deficiency in the current regulation; the introduction of out-of-court conciliation (Article 296) broadens the toolkit for resolving information disputes; the first legislative definition of the concepts of "honour" and "reputation" (Article 324) enhances the clarity of the law and is consistent with the ECtHR's standard of legal certainty. At the same time, these same articles contain a number of systemic deficiencies: the absence of a differentiated approach to public figures and private individuals in Articles 294, 295, 297 and 324; insufficient legal certainty in open-ended formulations in Articles 294, 296, 326 and 327; disproportionate remedies in the form of the destruction of a document (Article 294) and the entire print run (Article 297); and the absence of qualifying criteria and time-limits for the exercise of the right of reply (Article 295).

In the field of the digital rights of natural persons (Articles 321, 328, 332, 336, 337), the Draft Law demonstrates an ambitious attempt to cover a broad spectrum of contemporary digital relations. The inclusion of metadata, search queries and geolocation data within the scope of digital privacy (Article 336), the enshrinement of the right to erasure (Article 328), the protection of personal notes in digital form (Article 332) and the recognition of the right to digital quiet (Article 337) are all positive innovations consistent with contemporary regulatory trends. At the same time, the establishment of "consent" as the sole basis for digital data processing (Article 336), the absence of procedural safeguards governing State access to digital data, the inconsistency with the requirements of the EU Regulation 2016/679 (GDPR), and the absence of exceptions for public figures (Article 337) substantially diminish the quality of the proposed regulation.

It could also be noted that Articles 345 and 353 of the Draft Law, which extend the system of digital rights to legal persons, may benefit from revisions. Notwithstanding the positive idea of the statutory enshrinement of the digital identity and digital security of legal persons, the implementation of this idea in the proposed wording requires substantial reconsideration. The application to legal persons of the categories of "personal space" and "digital privacy", developed for the protection of the human dignity and autonomy of natural persons, is contrary to well-established ECtHR case-law. The establishment of the "consent" of a legal person as the sole basis for the processing of data on its digital image (Article 353, Part 2) creates a risk of paralysing regulatory oversight, anti-corruption control and investigative journalism – precisely those types of socially significant activity whose protection is one of the key priorities of EU law and Council of Europe standards. The absence in Articles 345 and 353 of exceptions for journalistic activities, OSINT analysis and mandatory public disclosure is a particularly critical deficiency in the case of provisions regulating the rights of legal persons, since the ECtHR recognises a significantly wider margin of appreciation for the State in limiting the privacy of legal persons.

A systemic problem running through all the provisions under analysis is the absence of anti-SLAPP mechanisms and any means of countering the use of the provisions on the protection of personal non-property rights as a SLAPP instrument. This is contrary to Ukraine's obligations in the field of countering strategic lawsuits against public participation, as enshrined in Council of Europe Recommendation CM/Rec(2024)2 and the EU Directive 2024/1069.

In summary, the Draft Law represents a significant step forward in the development of Ukrainian civil legislation but, in the part that is the subject of this Opinion, it is recommended to make revisions as below, before its adoption at second reading.

Recommendations

1. Articles 294, 295, 297, 321, 324, 336, 345 and 353: to be supplemented with differentiated provisions concerning public figures establishing an elevated standard of permissible criticism and public scrutiny in accordance with ECtHR case-law.
2. Articles 294, 296, 321, 326, 327 and 337: to remove open-ended formulations ("etc.", "law enforcement authority", "personal security", "material importance") and replace them with specific and exhaustive definitions in accordance with the requirement of legal certainty.
3. Articles 294 and 297: to remove the provisions on the destruction of a document and the destruction of a print run as disproportionate remedies; to revise the procedure for the prior prohibition on the dissemination of information with due regard to the principle of proportionality and the requirement of public interest.
4. Article 295: to be supplemented with qualifying criteria in accordance with the standards of Recommendation Rec(2004)16 and Directive 2010/13/EU, as well as to establish clear time-limits for the exercise of the right of reply and the grounds for refusing publication.
5. Articles 321, 327, 328, 332, 336: to be harmonised with one another and with the requirements of the EU Regulation 2016/679 (GDPR); to establish a system of lawful grounds for digital data processing in lieu of the single-basis approach of "consent"; to enshrine a special protection regime for particularly sensitive information and categories of persons (journalists, lawyers, human rights defenders).
6. Article 336: to be supplemented with procedural safeguards governing State access to digital data in accordance with the standard of "strict necessity" and with safeguards pursuant to the EU Regulation 2024/1689 (AI Act).

7. Articles 345 and 353: to reconsider the conceptual basis; to establish a system of lawful grounds for data processing; to expressly provide for exceptions for regulatory oversight, anti-corruption control and journalistic activities; to supplement the article with substantive criteria for restricting the right (legitimate aim, necessity, proportionality).
8. To include anti-SLAPP mechanisms precluding courts from granting interim relief in the form of a prohibition on media activities or restrictions on the activities of a journalist prior to the entry into force of a court judgment. In doing so, it is recommended that due consideration be given to the standards set out in Directive (EU) 2024/1069 and Committee of Ministers Recommendation CM/Rec(2024)2, as well as to the recommendations set out in the [Legal Opinion On Legislative Changes on the Protection of Public Participation from manifestly unfolded claims or abuse of judicial proceedings in Ukraine \(LEX_2026_09 of 27.02.2026\)](#), prepared by the Council of Europe in February 2026.
9. To ensure internal consistency among all the provisions under analysis and to align them with EU law and ECtHR case-law.