Ukrainian Parliament Commissioner for Human Rights competencies and legislation in the sphere of Access to Public Information

Legislation analysis and recommendations

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August 15, 2016

Contents of the report "Ukrainian Parliament Commissioner for Human Rights competencies and legislation in the sphere of Access to Public Information. Legislation analysis and recommendations"

Executive Summary

In our opinion the Ukrainian legislation in force does not provide a sufficient level of protection of the right to freedom of information. Main weaknesses involve:

1) Lack of clear definition of the competent appeal body in API cases;
2) Lack of stronger formal independence of the HR Commissioner;
3) The supposed appeal body has no competence to issue binding decisions.

Main strong points of the Ukrainian API model are:

1) Secure position of the HR Commissioner;
2) Strong investigative powers of the HR Commissioner;
3) Awareness of the need to improve.

The Draft *Law 2913 on improvement of certain provisions of legislation of Ukraine on Access to Public Information (hereinafter: Draft API law), if passed, would from our point of view provide a sufficient level of protection of requesters for API, however, in this paper we recommend several further improvements:*

1) Setting up an independent Information Commissioner (preferably a joint DPA body and API authority);
2) Improving Draft Law in certain aspects;
3) Providing IC with sufficient financial and human resources.

1 Objectives

The aim of this paper is to reveal the weaknesses of the existing Ukrainian legislation in the field of access to public information (hereinafter: API), specifically considering the competencies and efficiency of the present appeal authorities in this field. We will point out what legal circumstances negatively affect the exercise of the right to freedom of information on the levels of general status of the competent authority, its resources and relevant procedural provisions, focusing on the API appeals. In this paper we will not analyse any substantive provisions of Ukrainian existing or planned legislation on freedom of information, including but not limited to the definition of public information, definition of entities bound by API legislation, scope of free access and limitations thereof.

Based on the results of the analysis of the relevant legislation in the field of access to public information, we will give recommendation on necessary changes to:

1. status and structure of the competent authority;
2. powers of the competent authority;
3. sufficiency of human and financial resources for the effective exercise of powers of the competent authority;
4. possible ways to strengthen cooperation with NGOs.

For the purposes of this analysis we used English translations of the following Ukrainian legal acts as provided by the Council of Europe:

- *Constitution of Ukraine;*
- *Law on Access to public information (hereinafter: Law on API);*
- *Draft Law 2913 on improvement of certain provisions of legislation of Ukraine on Access to Public Information (hereinafter: Draft API law);*

- *Law on the Ukrainian Parliament Commissioner of Human Rights (hereinafter: Law on HR Commissioner);*
- *Law on information;*
- *Law on transparency of spending public funds;*
- *Code of Ukraine on Administrative Offences;*
- *Law on local self-government.*

2 Methodology

We evaluated the existing Ukrainian appeal mechanism system considering the following key aspects:

1. **Timeliness** is one of the crucial elements of FOI, because the value of specific information loses its importance if needed for a certain action (for example, for an investigative article by a journalist, for starting a public debate on a current issue, a document which can help the applicant prove something and on grounds of the document decide to start a court or some other legal procedure, or to prove that a public official is corrupt or not taking all the necessary measures needed to fulfil his public duty).

2. To ensure timeliness it is essential how **efficient** the appeal procedure is in cases where the public authority declines the access, does not respond or is silent (the so called "administrative silence"). It is therefore important whether the appeal body reacts rapidly or whether the slowness of the appeal mechanism in fact only "helps" the first level body gain more time before giving the information to the public, helps to reduce the importance of potential public debate or even makes the information obsolete, not relevant any more.

3. For efficiency evaluation, **power and significance of the decisions** issued by the appeal bodies are crucial. It is essential to evaluate which type of appeal body is likely to be most effective in ensuring the disclosure of information: the one which can issue binding decisions or the one which can issue only recommendations? Such decision shall take into consideration also general legal culture.

4. For effective protection of FOI, the **costs** that the applicant has to pay for gaining the information may also be an important element: the more expensive the appeal procedure, the less likely it is that the applicant will decide to pursue it.

5. In taking decisions on access to information requests, there is always a chance that the public authority will try to hide its mistakes, arising from the requested documents. Precisely in such cases it can make a significant difference whether the appeal body has strong **investigative competences** and is genuinely **independent** of the body it supervises (which would potentially include also the Parliament itself).

Having all these relevant factors in focus, we answered the following questions regarding advantages and disadvantages of the legislation in effect and the planed Draft FOI law:

- How independent is the appeal authority?
- Does the appeal authority have strong investigative competences (is the appeal inefficient because of the passivity of the public authority – the holder of a document)?
- Can the appeal authority issue binding decisions?
- How high is the possibility of a reversed decision?
- What is the risk of backlogs occurring?
- Can the appeal body itself be sued before the court?
- Is it necessary to hire a lawyer to file an appeal?
- Are there high costs for the applicant to file an appeal?

3 Weaknesses

3.1 Comparative analysis

Before we answer how efficient the current Ukrainian FOI system is, let us explain through an international comparison the general advantages and disadvantages of having an Ombudsman as an appeal mechanism in between the first level bodies and courts as an appeal body with binding decision powers.

Some countries[1] leave the conflict between the body obliged to follow the rules of access to information and the applicant to be settled before the courts (as is the case in Ukraine as well). In Bulgaria the decisions for granting access to public information or for refusals to grant access to public information may be appealed before the regional courts or before the Supreme Administrative Court, depending on the body which issued the decision under the provisions of the Administrative Procedure Act or the Supreme Administrative Court Act.[2] In Sweden the majority of the cases have to be appealed before the court. Article 15 of Freedom of Press Act defines that if a public authority, other than the Parliament or the Government, has rejected an application for access to an official document, or if such a document has been made available with reservations which restrict the applicant's right to disclose its contents or otherwise to make use of it, the applicant may appeal against the decision. An appeal against a decision by a Minister is lodged with the Government, and an appeal against a decision by another authority is lodged with a court of law. According to this, Sweden has a kind of a mixed system – court as an appeal body for all cases except when the Minister is a deciding body.

[1] E.g. Bulgaria, Sweden, Israel, Finland.
[2] Article 40 of Bulgarian FOIA, available at http://www.legislationline.org/documents/action/popup/id/6299.

In Finland the general appeal procedure is prescribed by the Act on Administrative Judicial Procedure (586/1996)[3]. The Act on the Openness of Government Activities further on defines that the decision of an authority must be subject to an appeal, as provided in the Act on Administrative Judicial Procedure. A decision of an authority other than those listed in chapter 7[4] of the Act on Administrative Judicial Procedure shall be appealed before the Supreme Administrative Court. However, an appeal against the decision of a local or regional authority and a decision of an institution, corporation, foundation or private individual exercising public authority shall be lodged with the Administrative Court.[5]

In Israel too, the applicant trying to achieve disclosure after an initial denial must petition the Administrative Court.[6]

This system proved to be extremely non-efficient in the countries where judiciary process is slow since the principal aim of the access to information - timeliness - is not reached (i.e. EU, Bulgaria). Furthermore, the applicant procedure before the court is also quite expensive. For example, in Israel a procedure requires an attorney to draft pleadings and a payment of (approx.) $420 court fee. According to the Movement for Freedom of Information a judgment in such FOI appeals in Israel can take years, and again the agency can easily avoid disclosure by simply not complying. There are no real sanctions for non-compliance.

Appealing directly to a court would be definitely the most expensive and time-consuming. Applicants, facing several years of litigation, costing thousands of dollars or Euros are less likely to challenge a denial.

[3] See Chapter 2, law is available at http://www.finlex.fi/en/laki/kaannokset/1996/en19960586.pdf.
[4] Section 7: Appeal against the decision of a State administrative authority
»(1) Appeal against a decision of the Council of State or a Ministry shall be lodged in the Supreme Administrative Court. The appeal may only be founded on the illegality of the decision.
(2) Appeal against a decision of an authority subordinate to the Council of State shall be lodged in an Administrative Court. (433/1999)«
[5] Chapter 8.
[6] Article 17 of Israeli FOIA.

In some of the systems the applicant can, in addition to the appeal possibility before the courts, ask for the Ombudsman's help as well (Finland, Sweden, Denmark, Bulgaria ... and Ukraine as well), but he/she has to decide whether to appeal to Ombudsman and miss the time-limit for the appeal before the court or use both possibilities at the same time. Namely, to go only to an Ombudsman when not satisfied with his/her recommendation, or when the public sector body has not taken the recommendation into consideration, after the period prescribed in legal caution which instructs the party when the appeal has to be lodged, the court will not try the case. Therefore, the applicant loses the possibility to obtain binding decision on grounds of the request which has gone through the decision process at the public sector body - the holder of the information.

In many countries[7] the function of a review is subject to a procedure before an Ombudsman and her/his competence is explicitly prescribed by the FOIA (as is the case also in Ukraine), and not only in a law defining all of her/his competencies. In majority of the states with this system the Ombudsman does not have the status of a second instance body which the applicant is obliged to use, but the procedure before him/her is only a possibility which an applicant can decide to use or not (also the case in Ukraine). In the analysed laws the role of an Ombudsman therefore looks more like a role of a mediator. So the person who is not satisfied with the decision of the public body which holds the requested document can either appeal to an Ombudsman, or directly to court. Despite the fact that Ombudsman can only give recommendations and not bring binding decisions, it seems that this possibility regarding access to public information is quite often used by the applicants (in EU, Sweden, Finland), mainly for the reason of efficiency (faster procedure than at courts) and financial reasons (free of charge). One reason could also be that to file an appeal to Ombudsman, the applicant is not obliged to hire a lawyer.

[7] E.g. Australia, Bosnia & Herzegovina, New Zealand, EU, Moldova has a specialized Ombudsman dealing only with access to public information and data protection...

Table 1 – A chart of advantages and disadvantages

Appeal body / Advantages/Disadvantages	Appeal to the 1st level body itself	Appeal to higher administrative body	Court directly after 1st level body	Ombudsman	Information Commissioner
Inefficient appeal because of passivity of the body - holder of a document	yes	yes	no	no	no
Backlogs appear more often	yes	yes	yes	no	no
Binding decisions	yes	yes	yes	no	yes
High costs	no	no	yes	no	no
Higher possibility for reversed decision	no	no	yes	yes	yes
Timeliness	no	no	no	yes	yes
Can the appeal body itself be sued before the court?	no	no	no	no	yes
Necessary to hire a lawyer	no	no	yes	no	no
Strong investigative competencies	no	no	yes	no/yes	yes
Independency	no	no	yes	yes	yes

*Advantages/disadvantages are generalized properties of the appeal systems, and do not necessarily apply to an individual system in a specific country.

3.2 Ukrainian current situation

Let us evaluate now how efficient (regarding legal provisions defining appeal procedure) in our opinion is the existing Ukrainian FOI system. Primarily, which is the competent authority for handling requestors' appeals.

Existing Ukrainian legislation provides for limited and rather confusing appeal possibilities, therefore, it is ineffective in providing sufficient legal security to requesters. Pursuant to Art 23/I of the Law on API decisions, actions or inactions of information administrators may be appealed to the administrator's superior official, a higher authority or court. There are no specific provisions on appeal procedure and on possible actions, competencies or powers of the appeal bodies. It is unclear when the requester should appeal to the administrator's superior, a higher authority and when he/she may (or should) file an appeal directly with the court. It is even less clear which is the "higher authority" in an individual case. It is unlikely for an average requester to be familiar with the hierarchy of authorities, especially with the broad notion of information administrators[8].

Considering Mrs. Kushnir and Mr. Kotlyar who have both commented that there is no confusion in practice as to which is the competent appeal body, we underline that this does not mean that the legislation itself provides for sufficient legal certainty and predictability. Additionally, they both pointed out that under the Constitution and the Law on the Ombudsman, the Ombudsman can receive complaints for any human rights related violation whereas the right to freedom of information is a human right guaranteed by the Constitution of Ukraine. We cannot argue against that, however, what we do suggest is that general Ombudsman competence, together with several other competent authorities (the administrator's superior official, a higher authority or court), are significantly less clear possibilities as opposed to a specialised independent appeal body, such as the Information Commissioner (or Commission).

It also has to be assented that the current legislation (concretely Article 212/3 of the Administrative Code of Offences) allows Ombudsman to write a protocol in which the administrative offences when administrator in charge for access to public information violates someone's right to information and the right to petition are described. The Ombudsman can proceed this protocol to the Court and further on Court has to decide whether there was a violation of the right in question or not. In such a case the Ombudsman

[8] Pursuant to Art. 13 of existing API Law these are subjects of public authority, legal persons funded by subjects of public authority, persons which perform delegated authorities, natural or legal monopolists.

has a status of a public prosecutor. This competence we understand as a suggestion for a penalty procedure, namely to penalize non obedient information (public) officers.

Additionally, in cases when administrator in charge for access to public information does not comply with the recommendation ("*submissions*"[9] or "*legal requests*"[10]) of the Ombudsman, the Ombudsman can issue a protocol based on the Article 188/40 of the Administrative Code of Offences and proceed it to the Administrative Court. In such a case the Ombudsman also has a role of a public prosecutor. The main difficulty the Ombudsman has using this power is that a person who does not follow the Ombudsman's recommendation has to meet with the Ombudsman personally and he/she has to reveal a passport number and other personal data. If he/she refuses to provide requested personal data, the Ombudsman cannot write the protocol neither according to the article 212/3 nor according to the article 188/40 of the Administrative Code of Offences. This competence seems to be close to judicial enforcement of the Ombudsman's recommendation, hence this way the recommendation through the court's verdict can become binding. Mr. Kotlyar commented that this provision only enforces individual liability for non-compliance, whereas instructions or recommendations are binding under the law as such, under threat of administrative sanction for non-compliance.

Such a procedure is highly complicated, ineffective and completely out of requester's power. Surely, part of the right to information should also be the right of the requester to enforce the right to information through judiciary system. If only the Ombudsman has the discretionary power to decide whether its recommendation will be enforced through the court, a requester cannot use any power to show that he/she disagrees with the Ombudsman's negative decision, namely when the Ombudsman decides not to proceed the case to the court.

Administrative penalties are an efficient tool for API enforcement, however, more appropriate procedure is undoubtedly the one, through which the power to proceed the

[9] Law on HR Commissioner translation terminology.
[10] the Administrative Code of Offences translation terminology.

matter to the court is defined as the right of the requester to file an appeal. This way the requester could also contest the Ombudsman's decision (with which it denies access to public information) and decides whether he/she would continue the legal fight to receive the requested information through judiciary system with his/her own reasons and arguments.

Further on, it is highly unclear how do the Ukrainian Parliamentary Commissioner on Human rights' powers of parliamentary control in the field of API[11] relate to the appeal procedure, i.e. what are its powers in relation to concrete requesters' appeals. The confusion is even greater considering the existing Art. 17/I provision of Law on API provides that parliamentary control over API rights shall be carried out by the Parliamentary Ombudsman[12], temporary investigation commissions of the Verkhovna Rada of Ukraine and members of the Ukrainian Parliament; in addition, also civic control and state control exist. With so many possible control and appeal mechanisms it is unclear what should the requester do in case he or she does not receive the requested information (in due time), what are the possible results, how much time will it take and how much will it cost.

These procedural confusions and uncertainties could be resolved by establishing a new independent appeal body, suggested in this paper, with clear competencies and set of procedural provisions on this matter as well and a possibility that such a body itself can be sued before the court.

Considering the Parliamentary Ombudsman which is in practice the main authority handling requestors' appeals in API cases, it is reasonably well independent and autonomous. The appeal bodies' independence should be guaranteed, both formally and through the process by which the head and/or board is/are appointed.[13] The Ombudsman is

[11] Pursuant to Art. 14/V the HR Commissioner shall exercise parliamentary control over the observance of the right to API.

[12] We presume that Parliamentary Ombudsman and Parliamentary Commissioner for Human Rights are the same entity and the difference in terminology is only a result of translation.

[13] Article 19, The Public's Right to Know: Principles on Freedom of Information Legislation, London 1999, available at http://www.article19.org/pdfs/standards/righttoknow.pdf, viewed on 26 August 2008.

nominated, appointed and dismissed by the Parliament. With the slight lack of formal independence (nomination and election within one body), it can be argued that on the other hand the current Ombudsman has relatively strong investigative powers[14] and several provisions aiming at establishing its independence[15] are also reasonably strong. Although, when discussing formal independence through relevant laws sent to us to evaluate it could not be established how strong a so called administrative independence is (i.e. does the Ombudsman have the power to nominate its own employees or the employees are chosen by the Parliament, is the budget of the Ombudsman (not just the total amount but concrete spending) under the complete authority of the Ombudsman or it has to go through the accountancy and approval of the Parliament ...). Mr. Kotlyar and Mrs. Kushnir commented that the Ombudsman in the practice is independent enough (i.e. can select its own staff etc.).

Furthermore, the Ombudsman's acts of response to violations are:

1.) the constitutional submission to the Constitutional Court of Ukraine on issues of legal acts' conformity with the Constitution[16] and
2.) submission to bodies for purpose of taking relevant measures aimed at elimination of revealed violations[17].

These acts are recommendations and not binding decisions which could be enforced in any way (the Ombudsman is hence the so called "*toothless tiger*", this is especially the case in the countries where the ombudsman tradition is still new in the legal culture**). It can be argued that this is a major deficiency in the Ukrainian API system.** However, a

[14] Among others, the Parliamentary Ombudsman has the power to invite and question officials and other persons, obtain and review documents (including classified documents and irrespective of their ownership), enter premisses, attend sessions and appeal to a court (Art. 13 of Law on HR Commissioner).

[15] Prohibition of intereference with the Ombudsman activities, absence of its obligation to explain details of cases handled by it, right to immunity, right to be provided with an employment upon the termination of tenure and mandatory state insurance (Art. 20 of Law on HR Commissioner).

[16] Art. 15/II of Law on HR Commissioner.

[17] Art. 15/III of Law on HR Commissioner.

positive aspect is that it may oversee the actions of all entities subject to abiding the Law on API.

Experiences show that in systems with the Ombudsman acting as the higher instance the possibility of reversed decisions (i.e. the decision/recommendation of the Ombudsman is different than the decision of the PSI holder) and speed of the proceedings are at a sufficient level. Also backlogs occur less frequently than in countries where higher administrative bodies or courts perform the role of "second instance". If this is the case in Ukraine as well, it has to be further evaluated. We recommend to perform an analysis on the reversed decisions ratio and average time of handling API cases by the Parliamentary Ombudsman, to evaluate whether the efficiency required for API appeals system are met.

Considering the Parliamentary Ombudsman cannot handle cases that are reviewed by the courts[18] and that the deadline for filing an appeal to the Parliamentary Ombudsman is one year from the disclosure of the violating act[19], there is a high possibility that API cases that have been handled by the Parliamentary Ombudsman will not be able to be reviewed upon the requester's appeal by the court later on. This is a serious weakness of the system.

There is no explicit requirement to hire a lawyer for filing an API appeal which also means that costs are lower, however, with the confusing provisions on powers and the procedure, hiring a lawyer seems needed, albeit, is not necessary *ex lege*. In analysing the legislation provided by Council of Europe, we did not come across any appeal costs related provisions.

After presenting this opinion to Council of Europe we have learned that abovementioned unclarities in legislation, do not cause any problems in current practice and are resolved efficiently. However, the legislation in force remains unclear which causes legal uncertainty. It is good that the API appeal system in Ukraine works well in practice at the moment,

[18] Art. 17/IV of the Law on HR Commissioner.

[19] Art. 17/II of the Law on HR Commissioner. In exceptional circumstances, the deadline may even be extented for up to two years.

nevertheless, as a consequence of unclear, therefore uncertain, legislation this could not necessarily be the case (or could not be the case in the future). The objective of this paper was not to comment on current practices in Ukraine, but rather to analyze the existing and proposed legal texts and give recommendation thereof. As described in this paper, we have found ***deficiencies in legislation*** *(specifically the Law on API) which leave plenty of room for different interpretations and this could lead to a much different practice than the one currently in place; possibly an inefficient and highly arbitrary one. As stated in this paper we have therefore, found that the level of legal certainty in handling API cases is low.*

4 Recommendations

4.1 Status and structure of the competent authority

First of all, and most importantly, we recommend that Ukraine sets up an independent (*sui generis*) state Information Commissioner or Commission (hereinafter: the IC)[20] which would be the sole second instance body competent for handling API appeals. According to Article 19[21] opinion[22], a system with an IC as an appeal body has the least disadvantages and applicants can thereby obtain information in the fastest possible way.

Independence should primarily be established through the two level process of nominating, appointing and dismissing the IC. These three competencies should be for example divided between the president which would nominate the IC and the legislative branch which would be competent for appointing (approving) and dismissing the IC on the proposal of the

[20] In this paper we do not go into details on whether there should be a one-person commissioner or a collective body (commission). The emphasis is on independence of IC leadership.

[21] One of the largest non-governmental organizations in the world dealing with the protection of freedom of expression and access to public information.

[22] Article 19, A Model Freedom of Information Law, available at http://www.article19.org/pdfs/standards/modelfoilaw.pdf.

president[23]. However, only formal and structural independence is not a guarantee for efficient human rights protection – clear procedural norms, sufficient powers and resources must also be attributed to the competent authority.

As Mr. Kotlyar reasonably pointed out, it would be ideal to set up the IC on the constitutional level (i.e. amend the Constitution of Ukraine to include the IC as an independent DPA and API appeal body). This would make it impossible to abolish the IC without constitution amendments, therefore, minimizing political pressures on the IC. However, we cannot agree with Mr. Kotlyar on the necessity to include the IC into the Constitution. Exhaustive public powers principle does not extend to establishing independent institutions intended to protect human rights, so there is no need to include the IC into the Constitution. The IC can be simply set up by a law, however, this would mean it can simply be abolished by a law.

Considering personal data protection is one of the most common exceptions to free access of data and EU standards which require each Member State to have an independent data protection authority (hereinafter: DPA), we would highly recommend setting up a joint independent authority competent for handling the two human rights, which has proven to be a very effective model in many modern democracies. The competence of both mentioned human rights under one umbrella is already the case in Ukraine since data protection is also under the jurisdiction of the Parliamentary Ombudsman. Such a joint independent API and DPA authority is highly efficient in handling conflicts between the two human rights (privacy v. FOI) and is very cost-effective (having common administration and infrastructure).

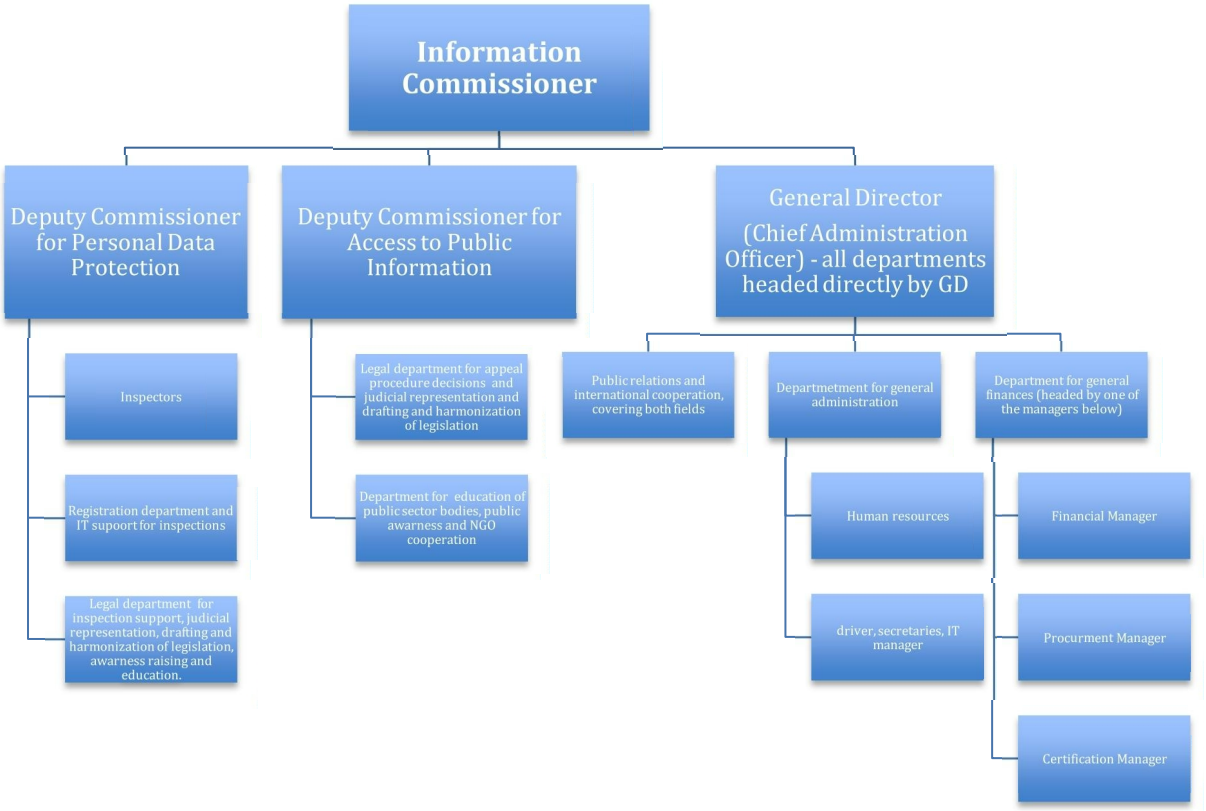
It has to be stressed that there is a clear trend in Europe to combine the functions of data protection and for access to public document under one authority. Examples of countries

[23] Preferably the competent authority to nominate the appointment should also be the one competent for proposing dismissal in certain circumstances.

which have established such joint bodies include Germany, Hungary, Ireland, UK, Serbia, Montenegro, Estonia, Slovenia and Switzerland.

Because establishing new public sector body always takes time to consider all the legal details and respect the legislative procedure for enacting the law in the parliament, we recommend that until then, in the transitional period, current competent body for FOI (Ombudsman) should be further strengthened (financially, employing more staff etc.). Only that way the FOI will be efficient as a human right and public sector bodies obliged to follow the rules of transparency in effective manner.

We recommend the following IC structure is set up[24]:



We furthermore recommend Ukraine establishes several outposts evenly distributed throughout the country according to *per capita* and geographical needs, preventing

[24] As discussed above (see page 13), we make no recommendation on whether the IC should be a one-person or collective body.

backlogs from happening. Outposts should have no independence of their own and should include only legal department for API appeals and personal data protection inspectors.

Current position of the HR Commissioner provided in Article 20 of Law on HR Commissioner aims at establishing its strong independent position, which is a strong point of current legislation in Ukraine, therefore, we recommend providing the IC with equal statutory amenities.

4.2 Powers of the competent authority

Considering the weaknesses discussed above, we believe that API legislation in Ukraine does not provide adequate protection of the right to freedom of information. However, after reviewing the Ukrainian Law on HR Commissioner[25] together with the Draft API Law[26], we can say that appeal body powers will be sufficient, however, there is room for improvement.

Namely, we would recommend including the power to obtain help by the police authorities when necessary and implementation of "*mandatory requests (instructions)*"[27] enforcement provisions.

The Draft API law we were provided with is also somewhat confusing in the sense that point 6 and 7 of para.2, Article 17 **seem to be in direct conflict**. While point 6 refers to mandatory instructions (i.e. they should be followed or sanctions shall be imposed) including amending or overturning legal acts of PSI holders, point 7 refers to the power of HR Commissioner to file a suit with the court for establishing that a decisions or action of PSI holder had been illegal. It remains uncertain in what cases will the first instance decision be overturned

[25] Art. 13 of Law on HR Commissioner.
[26] Art. 17 of Draft API Law.
[27] Art. 17/II(6) of Draft API Law.

directly via binding decision by the HR Commissioner and when will the HR Commissioner refer to the court to do the same.

Therefore, we advise to delete point 7 and at the same time include extra provisions on IC decisions enforcement and allow requesters and PSI holders (i.e. first instance bodies) to contest IC decision before the court (preferably administrative court). As we understand this is included in Draft API Law.

4.3 Sufficiency of resources

Another important aspect of IC independence is the need for providing it with sufficient financial and human resources to enable IC independence and its efficiency in exercising the powers of authority in the field of API.

Financial resources of IC should be sufficient to cover the appropriate number of staff being able to handle all of the assigned tasks in a timely and highly professional manner. In Slovenia, the number of staff handling substance of API cases[28] is cca. 6 per 1 million inhabitants and another cca. 6 per 1 million inhabitants handling personal data cases on full time permanent employment basis. There are 3 administrative staff, 2 IT professionals supporting both human rights' staff and a head of each section[29]. The Slovenian model of 7 professionals per 1 million handling API appeals and the same number performing personal data inspections has proven to be sufficient in practice with no relevant backlogs in either field. However, it is important to consider that in the field of API the Slovenian IC has no competencies concerning legal drafting (including EU cooperation), awareness raising,

[28] They are all lawyers.
[29] Secretary general, API deputy, PD deputy, IT section deputy and head of inspectors.

education, general API legislation supervision and proactive transparency[30], i.e. it is only competent for handling individual API appeals, filing constitutional reviews[31] and giving remarks in legal drafting procedures. With the Ministry of Administrative Affairs having 7 professionals work in the API field (awareness raising, general supervision, legal drafting, support and education of PSI holders, proactive transparency promotion), we recommend another 4 staff members per 1 million inhabitants to cover these fields of work.

The IC **should be able to appoint its own deputies and staff** (as it is the case with the Ombudsman today). The IC (or members of the Commission) and its staff members should have a high enough salary to prevent possibilities of corruption and to attract competent and highly educated experts to accept the posts. The IC salary should be equal to constitutional court justices' salaries.

Budget should also consider that:

1.) administration[32] should be large enough to handle the total number of staff,
2.) there is need for field work (vehicles, portable computers and printers are required),
3.) the need for use of modern technology and knowledge thereof is constantly increasing (including but not limited to providing sufficient resources to set up and maintain useful IC website and enable IC to be present in social media) and
4.) an appropriate working environment including appropriate stimulation should be set to attract the best experts, also offering them possibilities of further professional education.
5.) We also recommend the IC sets up a user-friendly help line which also requires additional financial and human resources.

[30] These competencies are held by the Ministry of Administrative Affairs. The division of competences in the API field between an independent IC (individual appeals) and an executive branch body has its advantages but also has several weaknesses, however, this issue is not a subject of this paper.
[31] Through individual appeals. In the API field, no constitutional review demand has been filed.
[32] Setting paychecks of administrator staff should consider they are handling also confidential data and personal data.

4.4 Possible ways to strengthen cooperation with NGOs

Empowering NGOs is an important factor in establishing the culture of transparency and sustaining strong freedom of information rights in society. NGOs can act as important partners of the IC.

We recommend the IC establishes a special division for awareness raising and education of the relevant public which would have a priority task to focus on NGOs. IC could also establish a special free-of-charge education programme for NGO professionals.

Cooperation with NGOs could also involve IC financing projects aiming at further peer-to-peer awareness raising and / or education, as well as programmes for targeted awareness raising, i.e. among journalists (the media), the population (*en general*, locally, the youth, etc.), PSI holders (focusing on different groups) or decision-makers. NGOs could also be engaged, encouraged or even financed to perform analysis or research in the field of freedom of information.

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