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*The Rights to access to Information and National Security in the Ukraine in the  
System of Human Rights*

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# Secção I

## Investigação Científica\*

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## The Rights to access to Information and National Security in the Ukraine in the System of Human Rights

### O Direito de Acesso à Informação e a Segurança Nacional na Ucrânia no Sistema de Direitos Humanos

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**ABSTRACT:** The article is devoted to the study of the problems of realizing the right of a person to access information in Ukraine, which is important for national security in the human rights system, its features and components, taking into account the practice of the ECtHR. The methodological basis is a set of philosophical, general scientific, special methods of scientific knowledge, which allowed the authors to determine the importance and complexity of the human right to access to public information that is important for national security and its place in the decisions of the ECtHR. The article analyzes international legal norms and standards, theoretical and legal approaches to understanding the right to access to public information under study, establishes its components, correlation with other human rights. The concept, types, principles of realization of the right to access to information of importance to national security are established. The ways of improving the national legislation regarding the implementation of the human right to access to public information that is important for national security in the context of Ukraine's European integration are proposed.

**KEYWORDS:** human rights, right to access information, national security, practice of the European Court of Human Rights, public information, publicly necessary information

**RESUMO:** O artigo é dedicado ao estudo dos problemas de concretização do direito de acesso de uma pessoa à informação na Ucrânia, importante para a segurança nacional no sistema de direitos humanos, suas características e componentes, levando em consideração a prática do Tribunal Europeu de Direitos Humanos. A base metodológica é um conjunto de métodos filosóficos, científicos gerais e especiais de conhecimento científico, que permitiram aos autores determinar a importância e a complexidade do direito humano ao acesso à informação pública importante para a segurança nacional e seu lugar nas decisões do Tribunal Europeu

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de Direitos Humanos. O artigo analisa normas e padrões jurídicos internacionais, abordagens teóricas e legais para entender o direito de acesso à informação pública em estudo, estabelece seus componentes, correlação com outros direitos humanos. São estabelecidos o conceito, tipos, princípios de realização do direito de acesso à informação de importância para a segurança nacional. São propostas as formas de melhorar a legislação nacional relativa à implementação do direito humano ao acesso à informação pública importante para a segurança nacional no contexto da integração europeia da Ucrânia.

**PALAVRAS-CHAVE:** direitos humanos, direito de acesso à informação, segurança nacional, prática do Tribunal Europeu de Direitos Humanos, informação pública, informação publicamente necessária.

## 1. Introduction

In modern conditions, an information society is being formed, in which access to information resources is a priority, and information has become a product of social production. Freedom of information for civil society in Ukraine is one of the main needs, because it is in such conditions that the right to receive information becomes very important in the system of human rights and freedoms. Of great importance in the system of human rights and freedoms is the right of citizens to have access to public information that is important for national security. According to the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Ukraine and the EU have committed themselves to ensuring the gradual adaptation of Ukrainian legislation to the EU acquis in accordance with the directions defined in this Agreement, including in the field of access to information, and ensure its effective implementation<sup>6</sup>.

Modern social needs, the development of intellectual technologies and artificial intelligence, information wars, including using the Internet, the use of modern information security systems, the introduction of martial law in Ukraine from February 24, 2022, have led to the relevance of studying the problems of realizing the human right to access to information, which is important for the national security of Ukraine. Digitalization, which in a broad sense means legal, political, economic, cultural, social and political changes caused by the use of digital tools and technologies, embraces the private and public spheres, revives

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<sup>6</sup> On the ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand: Law of Ukraine dated September 16, 2014 No. 1678-VII. : <http://zakon4.rada.gov.ua/laws/show/1678-18>

the study of human rights in a horizontal dimension and influences the revision of their foundations<sup>7</sup>.

Effective access to information ensures democratic development, the development of sound policies and public control over the actions of the state and is an essential component of national security<sup>8</sup>. However, the interests of national security should not serve as a basis for concealing the facts of human rights violations, as well as hinder the protection of violated rights.<sup>9</sup> However, in many countries of the world, legislation does not provide an adequate legal basis for systematic access to information, both in terms of human rights and at a practical level<sup>10</sup>. The reasons for the violation of the human right to information and its protection, first of all, are ignorance of the law and a lack of understanding of the harm that can be caused by this<sup>11</sup>. Similarly, the legal protection of state secrets on national security grounds has taken on a new meaning, while raising public concern about its impact on freedom of information<sup>12</sup>. A special role in the right of access to information should be given to the courts<sup>13</sup>.

European Court of Human Rights uses various legal sources to support its decisions systematically and consistently, which is necessary to enhance the clarity and predictability of its judgments<sup>14</sup>. Jing, C. examines how the European Court of Human Rights conducts the national security aptitude test according to two models against which several representative test criteria can

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<sup>7</sup> RAZMETAeva Yu, BARABASH Yu, and LUKIANOV D. The Concept of Human Rights in the Digital Era: Changes and Consequences for Judicial Practice. Access to Justice in Eastern Europe. 2022. 3(15). 41-56. DOI: 10.33327/AJEE-18-5.3-a000327

<sup>8</sup> National security and access to information. Committee on Legal Affairs and Human. (Doc. 13293. 03 September 2013). Rights <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20056&lang=EN>

<sup>9</sup> National security and access to information. Committee on Culture, Science, Education and Media. (Doc. 12548 of 15 April 2011): <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20131&lang=en>

<sup>10</sup> RUBINSTEIN, I, NOJEIM, GREGORY T, and LEE, R.D. Systematic government access to personal data: a comparative analysis, *International Data Privacy Law*, 2014. Vol.4, Iss.2, (2014), 96–119, <https://doi.org/10.1093/idpl/ipu004>

<sup>11</sup> SHEVCHUK, O., KUCHERYAVENKO, M., DAVYDENKO, S., and BABAEVA O. Implementation of the patient's right to obtain information in the concept "health and human rights". *Amazonia Investiga*, 2020. 9(29), 288-296. <https://doi.org/10.34069/AI/2020.29.05.33>.

<sup>12</sup> NASU, H. State secrets law and national security. *The International and Comparative Law Quarterly*, 2015. 64(2), 365–404. <http://www.jstor.org/stable/24760684>

<sup>13</sup> BIDZINSKI Mariusz. Konstytucyjne prawo dostępu do informacji publicznej. *Przegląd Prawa Konstytucyjnego*. 2012. 4 (12). 119-134.

<sup>14</sup> GERARDS, J. Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights. *Human Rights Law Review*. 2018. 18 (3), 495–515. doi: <http://doi.org/10.1093/hrlr/ngy017>.

be classified: (1) the human rights priority model and (2) the national security priority model. security. In order to reconcile national security with the protection of human rights, the European Court of Human Rights requires that the interference with rights be fit to achieve the goals set by the government<sup>15</sup>.

However, until now, the legal nature of the right to information, which is important for national security, its content and international norms and standards in their relationship with other human rights remain insufficiently studied. Also, the practice of the ECtHR in this area of its influence on the legislation of Ukraine has not been studied. The current problem is the ambiguous interpretation of these issues in the scientific literature and the imperfect legal definition of this subjective human right. No clear criteria for restricting this human right have yet been proposed at the legislative level. The relevance of the choice of the topic of this study is enhanced by the receipt by Ukraine of the status of a candidate for EU membership in June 2022 and the commitments made to bring Ukrainian legislation in line with international standards regarding the implementation of the human right to access to public information.

## **2. Materials and Methods**

The methodological basis of the work is a complex of philosophical, general scientific, special methods of scientific knowledge. Using a combination of these methods allowed the authors to reveal the goals and objectives of the article. With the help of methods of analysis and synthesis, the concepts of "public information", information of public interest (publicly necessary information, "right to information", "right to access information", "right to access public information") are clarified. information", their types. The inductive method made it possible to highlight the systemic shortcomings of the legal regulation of the realization of the human right to access to information important for national security. The formal legal method gave us the opportunity to conduct an effective analysis of the regulatory framework of international law, as well as the national legislation of Ukraine on the implementation of the right to information,

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<sup>15</sup> JING, C. The ECtHR's suitability test in national security cases: Two models for balancing human rights and national security. *Leiden Journal of International Law*, 2023. 1-18. doi:10.1017/S0922156522000735

which is important for national security. The use of the synthesis method made it possible to determine the directions for improving legal regulation in this area.

### 3. Literature review

Some aspects of the problems of realizing the human right to information and the problems of legal support of national security, analysis of the decisions of the ECtHR were studied by the following Ukrainian and foreign scientists. Nasu, H. indicates a separate area of law that defines and protects state secrets from unauthorized communication or disclosure<sup>16</sup>. Yannoukakou, A. notes that government information is collected for the benefit of society, and not in the interests of the organizations themselves, and forms the basis of a democratic regime. The author believes that the right to information follows from the right to self-expression, according to which, in order for a person to be able to freely express ideas, opinions and thoughts, he must be able to formulate them freely, and therefore be very well informed<sup>17</sup>. Banisar, D. points out that the right to privacy and the right to information are important human rights in today's information society. These two rights complement each other in holding the government accountable to others<sup>18</sup>. Salau, A.O. notes that the right to access information held by public and private bodies is a fundamental right necessary for the health of democracy and a means of protecting other rights, especially social-economic rights<sup>19</sup>. Silverman, M. believes that in order to protect public access to information and protect the values of an informed democracy, the judiciary has clear legislation that information must be kept secret in the interest of protecting national security<sup>20</sup> and others.

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<sup>16</sup> NASU, H. State secrets law and national security. *The International and Comparative Law Quarterly*, 2015. 64(2), 365–404. <http://www.jstor.org/stable/24760684>

<sup>17</sup> YANNOUKAKOU, A. Access to Government Information: Right to Information and Open Government Data Synergy. *Procedia - Social and Behavioral Sciences*. 2014. Vol. 147, 25, 332-340. <https://doi.org/10.1016/j.sbspro.2014.07.107>

<sup>18</sup> BANISRAR, D. (2011). The Right to Information and Privacy: Balancing Rights and Managing Conflicts. *SSRN Electronic Journal*. 10.2139/ssrn.1786473.

<sup>19</sup> SALAU, A.O. The right of access to information and national security in the African regional human rights system. *African Human Rights Law Journal*, 2017. 17(2), 367-389. <https://dx.doi.org/10.17159/1996-2096/2017/v17n2a2>

<sup>20</sup>SILVERMAN, M. National Security and the First Amendment: A Judicial Role in Maximizing Public Access to Information," *Indiana Law Journal*. 2003. Vol. 78: Iss. 3 , Article 6. Available at: <https://www.repository.law.indiana.edu/ilj/vol78/iss3/6> j

Scientists have also paid attention to the specifics of national security legislation and access to information and freedom of information Wells, C. E.<sup>21</sup>, privacy, publicity and security in the USA<sup>22</sup>, national security and judicial role regarding public access to information<sup>23</sup>, Importance of the European Court of Human Rights to the United Kingdom<sup>24</sup>, systematic Government Access to Personal Data<sup>25</sup>, national security litigation<sup>26</sup>, and the human right to security is understood by its authors as the legal mechanism for the implementation of this right as the activities of legal entities, law-making and law enforcement agencies, and acting legal norms governing their activities in a certain area<sup>27</sup>, features of the implementation of the human right to access the Internet<sup>28</sup>, and legal regulation of the implementation of the patient's right to receive information<sup>29</sup> and others<sup>30,31</sup>.

Despite the presence of a certain number of scientific publications, the studied problem regarding the realization of the human right to access to information that is important for national security remains insufficiently studied,

<sup>21</sup> WELLS, C. E. "National security" information and the freedom of information Act. *Administrative Law Review*, 2004. 56 (4), 1195–1221. <http://www.jstor.org/stable/40712195>

<sup>22</sup> HOROWITZ IL. Privacy, publicity and security: the American context. *EMBO reports*, 2006. 7: S40-S44. <https://doi.org/10.1038/sj.embor.7400690>

<sup>23</sup> SILVERMAN, Matthew I. National Security and the First Amendment: A Judicial Role in Maximizing Public Access to Information, *Indiana Law Journal*. 2003. Vol. 78: Iss. 3, Article 6. Available at: <https://www.repository.law.indiana.edu/ilj/vol78/iss3/6> j

<sup>24</sup> AMOS M. The Value of the European Court of Human Rights to the United Kingdom, *European Journal of International Law*, 2017. Vol. 28, Iss. 3, 763–785, <https://doi.org/10.1093/ejil/chx044>

<sup>25</sup> RUBINSTEIN, I, NOJEIM, GREGORY T, and LEE, R.D. Systematic government access to personal data: a comparative analysis, *International Data Privacy Law*, 2014. Vol. 4, Iss. 2, 96–119, <https://doi.org/10.1093/idpl/ipu004>

<sup>26</sup> ELLIS, T. S. The national security trials: a judge's perspective. *Virginia Law Review*, 2013. 99(7), 1607–1633. <http://www.jstor.org/stable/23528456>

<sup>27</sup> SHEVCHUK, O., MATYUKNINA N., BABAEVA O., DUDNIKOV A., and VOLIANSKA O. (2021) The human right to security in the implementation of the concept of the "right to health protection". *Juridical Tribune - Tribuna Juridica*. 2021. Vol. 11, Iss. 3. 535 -548.

<sup>28</sup> SHEVCHUK, O., ZUI, V., MARYNIV, I., DAVYDENKO, S., and MOKHONCHUK S. Human Right to Internet Access in Healthcare in the "Right to Health Concept": Legal Issues. *European Journal of Sustainable Development*. 2021. 10, 2, 286-300. Doi: 10.14207/ejsd.2021.v10n2p286.

<sup>29</sup> SHEVCHUK, O., KUCHERYAVENKO, M., DAVYDENKO, S., and BABAEVA O. Implementation of the patient's right to obtain information in the concept "health and human rights". *Amazonia Investiga*, 2020. 9(29), 288-296. <https://doi.org/10.34069/AI/2020.29.05.33>

<sup>30</sup> SHEVCHUK, O., SHEVCHUK, V., KOMPANIETS, I., LUKASHEVYCH S., and TKACHOVA O. Features of ensuring the rights of drug addicts for rehabilitation in Ukraine and the European Union: Comparative Legal Aspect. *Juridical Tribune – Tribuna Juridica*. 2022. Vol.12, Iss. 2. 264 - 282.

<sup>31</sup> SHEVCHUK, O., TROFYMENKO V., MARTYNOVSKYI V., GONCHARENKO G., and ZATENATSKYI D. Realization of the human right to palliative care in Ukraine: problems and legal questions (review). 2019. *Georgian Medical News*. 2019. 4. (289). 168 – 173.



there are a number of debatable approaches of scientists in the legal doctrine. In particular, little attention is paid to the compliance of national legislation in this area with the best practices of institutions and bodies of the EU and its member states, European standards in this area, and the practice of the ECtHR. An effective legal mechanism for protecting the human right to access to information in this area remains unresolved.

#### **4. Results and Discussion**

Before proceeding to the analysis of the practical practice of the ECtHR as a component of national security and the realization of the human right to access to information, we will establish the theoretical and legal aspects of the problem under study. National security should be understood as the protection of the individual, society as a whole and the state in all spheres of their life from threats to prevent, identify, prevent threats that can deprive material and spiritual values, stop or reduce the progressive sustainable development of the state and society<sup>32</sup>. In accordance with the Law of Ukraine "On National Security" in Article 1, the legal structure "national security of Ukraine" is given as the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats (Article 1 paragraph 9). However, this statutory definition is broad, and as a result, any public information may be relevant to national security and may be restricted in its interests. It should be noted that based on the norms of the Law of Ukraine "On National Security", a person, his rights and freedoms, the constitutional order, sovereignty, territorial integrity of the state are the main objects of national security, and the main subject of its provision is the state, which performs its functions through legislative, executive bodies. and the judiciary. For example, O. Shevchuk et al. understand the human right to security as a set of rights related to the protection of the legitimate interests of a person from unlawful encroachments and threats<sup>33</sup>.

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<sup>32</sup>GONCHARENKO G. A. Theoretical and legal foundations of the content of national security in the context of the development of security sector management. *Scientific bulletin of public and private law*. 2019. Iss. 5.T.1. 144-149. DOI <https://doi.org/10.32844/2618-1258.2019.5-1.25>

<sup>33</sup> SHEVCHUK, O., MATYUKNINA N., BABAIEVA O., DUDNIKOV A., and VOLIANSKA O. (2021) The human right to security in the implementation of the concept of the "right to health protection". *Juridical Tribune - Tribuna Juridica*. 2021. Vol. 11, Iss. 3. 535 -548.

In the national legislation of Ukraine, the norms aimed at regulating relations in the field of information that is of interest to national security are not systematized, some of them are declarative in nature, due to the lack of their implementation in the law enforcement process. The legal basis governing the access of citizens to information that is of interest to national security, in Ukraine, are the Constitution of Ukraine, the Laws of Ukraine "On Information", "On Access to Public Information", "On the Protection of Personal Data", "On State Secrets", "On Electronic Trust Services", «About electronic communications», "On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights", in the Law of Ukraine "On the Prevention of Corruption", "On National Security", and others, as well as decrees of the President of Ukraine, resolutions of the Cabinet Ministers of Ukraine.

The Constitution of Ukraine recognizes the right to freedom of thought and speech, free expression of one's views and beliefs, noting that everyone has the right to freely collect, store, use and disseminate information orally, in writing or in another way - at their choice (Article 34). At the same time, the Constitution of Ukraine also provides for the possibility of restricting the right to freedom of expression on the basis of the law in the interests of national security, territorial integrity or public order in order to prevent disorder or crime, for public health, to protect the reputation or rights of other people, to prevent disclosure information received in confidence, or to maintain the authority and impartiality of the judiciary<sup>34</sup>.

A similar definition of the concept of "information" in the relevant articles of the Law of Ukraine "On Information" dated October 2, 1992, which states that it is "any information and / or data that can be stored on tangible media or reflected in electronic form" (Article 1), and "the right to information" is understood "as certain opportunities for the free receipt, use, distribution, storage and protection of information necessary for the realization of one's rights, freedoms and legitimate interests"(Part 1 of Article 5)<sup>35</sup>. Thus, Part 1 of Article 200 of the Civil Code of Ukraine defines that "information is any

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<sup>34</sup>Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>35</sup> About information: Law of Ukraine dated 02.10.1992 № 2657-XII [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/2657-12#Text>

information and / or data that can be stored on tangible media or reflected in electronic form"<sup>36</sup>.

Analyzing the provisions of Article 1 of the Law of Ukraine "On Information" dated October 2, 1992, two main features of the concept of "information" are highlighted:

(1) information is information and / or data, that is, systematized information in the form of information or data, which makes it suitable for transfer;

(2) information can be stored on tangible media or displayed in electronic form information and / or data, that is, information is organized in such a form and documented or transmitted in such a way that it can be perceived by another person.

In the legal literature there is no single point of view on the understanding of the terms "public information" and "information of public interest (publicly necessary information)", their common features have not been established. Regarding the definition of "right to information", there are two scientific approaches. In the first case (narrow approach): the right to information is the right to access information, i.e. as a relative right<sup>37</sup>, in the case of a broad understanding, these are all types of subjective rights aimed at obtaining information or performing actions with it<sup>38</sup>. Some researchers they also distinguish the category of information rights. Under this term, some of them understand as a state-guaranteed ability of a person to satisfy their needs in obtaining, using, distributing, protecting and protecting the amount of information necessary for life<sup>39,40</sup>.

In the legal literature, information is divided into two types: (1) public and (2) closed. According to the order of access, information is divided into information with restricted access and open information (the circle of

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<sup>36</sup> Civil Code of Ukraine: Law of Ukraine dated 16.01.2003 № 435-IV. [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

<sup>37</sup> PETROV E.V. Information as an object of civil-legal relations: thesis PhD. Kharkiv, National University of Internal Affairs, 2003. 20 p.

<sup>38</sup> POLITANSKYI V. S. The Right to Information in the System of Fundamental Rights and Freedoms Man and Citizen. *Journal of the National Academy of Legal Sciences of Ukraine*, 2016. 4, 86 – 95. Available from: [http://visnyk.kh.ua/web/uploads/pdf/ilovepdf\\_com-86-95.pdf](http://visnyk.kh.ua/web/uploads/pdf/ilovepdf_com-86-95.pdf)

<sup>39</sup> KALYZHNYI K. R. Essence of information human rights in science of information law. *Legal Bulletin. Air and space law*. 2012. 4. 55-58.

<sup>40</sup> MARUSHCHAK A.I. Information law of Ukraine: Textbook. Kyiv, Dakor, 2011. 456 p.

respondents for receiving it is not defined). Restricted information may include (1) confidential, (2) secret and (3) proprietary information. The Law of Ukraine "On State Secrets" regulates public relations related to classifying information as a state secret, classifying, declassifying its material carriers and protecting state secrets in order to protect the national security of Ukraine. (Law of Ukraine "On State Secrets", 1994).

Regarding the definition of the concept of "information", "public information", "information of public interest (publicly necessary information)" in the legislative acts of Ukraine. Note that information of public interest (publicly necessary information), which is relevant to our subject of study, is classified as a type of publicly available information<sup>41</sup>. According to the decision of the Plenum of the Supreme Administrative Court of Ukraine dated September 30, 2013 No. 11. On the practice of applying the provisions of the Law of Ukraine dated January 13, 2011 by administrative courts, the following signs of public information can be distinguished: (1) a finished product of information, obtained or created only in the process of fulfilment by the subjects of power of their duties, provided for by the current legislation; (2) information previously displayed or documented by any means and on any media; (3) such information is in the possession of the subjects of power or other public information managers; (4) information cannot be public, if it is not created by the subject of power while the subjects of power are exercising their duties; (5) information cannot be public if it is not created by a subject of power<sup>42</sup>.

According to Art. 5 of the Law of Ukraine "On Information" everyone has the right to information, which provides for the possibility of free receipt, use, distribution, storage and protection of information necessary to exercise their rights, freedoms and legitimate interests. The realization of the right to information should not violate the public, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other citizens, the rights and interests of legal entities.

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<sup>41</sup> On the practice of applying the legislation on access to public information by administrative courts: Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated September 29, 2016 No. 10. [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v0010760-16/print>

<sup>42</sup> On the practice of application by administrative courts of the provisions of the Law of Ukraine of January 13, 2011 No. 2939-VI "On Access to Public Information": Resolution of the Plenum of the Supreme Administrative Court of Ukraine of September 30, 2013 No. 11. [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v0011760-13#n11>.

The legal definition of the term "public information" is contained in Art. 1 "On Access to Public Information" according to which public information is information reflected and documented by any means and on any media, received or created in the process of fulfilment by subjects of power of their duties under the current legislation, or in the possession of subjects of power, other managers of public information defined by this law. According to Part 2 of Article 1 of the Law of Ukraine "On Access to Public Information", public information is open and available, except as otherwise established by the legislation of Ukraine<sup>43</sup>. It should be noted that despite the fact that the "On Access to Public Information" contains a definition of the term "public information", in practice there is no unambiguous understanding of this concept.

Thus, access to information is a component of the human right to information, enshrined in Art. 34 of the Constitution of Ukraine. The Law of Ukraine "On Information" indirectly defines publicly necessary information - information that is the subject of public interest, and the public's right to know this information prevails over the potential damage from its dissemination. The right of citizens to information is an independent constitutional right that allows a person to freely create, collect, receive, store, use and disseminate information in a legal manner and in any legal way.

The subject of public interest may be information that: (1) indicates a threat to the state sovereignty, (2) territorial integrity of Ukraine; (3) ensures the implementation of constitutional rights, freedoms and duties; (4) indicates the possibility of human rights violations, misleading the public, harmful environmental and other negative consequences of the activities (inaction) of individuals or legal entities, etc. (Article 29)<sup>44</sup>. The list of public interests provided in the Law of Ukraine "On Information" is not exhaustive. Thus, depending on the order of access, public information is distributed into: (1) open information; (2) restricted information. Information with restricted access is information to which a special regime of protection, receipt, accumulation, storage and use is applied, depending on the nature of the content, value and

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<sup>43</sup> About access to public information: Law of Ukraine dated 13.01.2011 № 2939-VI [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

<sup>44</sup> About information: Law of Ukraine dated 02.10.1992 № 2657-XII [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/2657-12#Text>

properties of the specified information. In turn, information with restricted access includes (1) confidential, (2) secret and (3) proprietary information.

Article 6 of the Law of Ukraine "On Access to Public Information" uses a "three-complex test" to determine what information can be granted access and what information should be restricted. According to the first stage of this text, restrictions on access to information is a reference to the fact that the information is "official" and cannot be distributed in order to protect national security interests. At the second stage, the state authority (information manager) must assess whether disclosure can cause significant harm in the interests of protecting national security to this interest. At the third stage, it is also necessary to assess the harm from the disclosure of such information, if the public interest in obtaining it prevails<sup>45</sup>. However, in practice, a public authority may refuse information that, if provided, does not pose a serious threat to national security. Such actions of public authorities do not contribute to the confidence of citizens in it.

Based on the foregoing, intermediate conclusions can be drawn. Taking into account the provisions of the Law of Ukraine "About access to public information" and scientific approaches<sup>46</sup>, can be proposed under the term "public information" as information displayed and documented by any means and on any media (in written, audio-visual, electronic or any other material form). Such information is received, created or is in the possession of the subjects of power in the process of fulfilling the obligations provided for by the current legislation, or information of which the subjects of power are required to possess in accordance with the law. In addition, public information should include information that is in the possession of other public information managers, determined by law and of public interest.

The right of a person to access information that is of importance for national security is a set of rights related to the protection of the legitimate interests of a person in exercising the right to information of public interest (publicly necessary information) that is of interest to national security from

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<sup>45</sup>About access to public information: Law of Ukraine dated 13.01.2011 № 2939-VI [viewed date: 04 May 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

<sup>46</sup> YANISHEVSKAYA K. D., and BALENKO Ye. O. Administrative and legal regulation of access to public information. *Legal horizons*. 2018. <http://www.doi.org/10.21272/legalhorizons.2018.i13.p86>.

unlawful restrictions in this access. This right is a component of the human right to public information, which is a component of the general human right to information provided for in the Constitution of Ukraine. The human right to information consists of the following components, namely: (1) the right to freely collect information; (2) the right to free storage of information; (3) the right to free use of information; (4) the right to freely disseminate information orally, in writing or in any other way of one's choice; (5) the right to protection and protection of information.

### **Protection of Human Rights to access public information and National Security in the system of International Law**

In order to more effectively function and develop the legal regulation of the human right to access to information that is important for national security, one should take into account the norms of international and European law, recommendations of international organizations. Ukraine has ratified the Council of Europe Convention on Access to Official Documents, which obliges Ukraine to guarantee the right of everyone (not just a citizen) to access information<sup>47</sup>. It should be noted that the legitimate interest of the state in protecting official secrets should not become a reason for unreasonable restrictions on freedom of speech and information, international scientific cooperation and the work of lawyers and other human rights defenders.<sup>48</sup> In particular, article 13 of the UN Convention against Corruption provides for the need to apply measures aimed at ensuring effective access to information for the population<sup>49</sup>. The Convention for the Protection of Human Rights and Fundamental Freedoms also provides for the right to receive and impart information and ideas without any interference from the public authorities and regardless of frontiers. However, the Convention introduces a number of restrictions on this right: "The exercise of these freedoms ... and may be subject

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<sup>47</sup> Council of Europe Convention on Access to Official Documents: [viewed date: 04 May 2023]. Available from: [https://zakon.rada.gov.ua/laws/show/en/994\\_001-09?lang=en#Text](https://zakon.rada.gov.ua/laws/show/en/994_001-09?lang=en#Text)

<sup>48</sup> Fair trial issues in criminal cases concerning espionage or divulging state secrets. [viewed date: 04 May 2023]. Available from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17535&lang=en>

<sup>49</sup> United Nations Convention against Corruption dated 10.31.2003 [viewed date: 04 May 2023]. Available from: [http://zakon2.rada.gov.ua/laws/show/995\\_c16](http://zakon2.rada.gov.ua/laws/show/995_c16)

to certain formalities, conditions, restrictions or sanctions prescribed by law and necessary in a democratic society in the interests of national security ...”<sup>50</sup>.

Documents Johannesburg Principles (National Security, Freedom of Expression and Access to Information, 1995), as well as "Global Principles of National Security and the Right to Information (2013)" have a certain significance for our subject of research. However, we note that they are not obligatory for the EU member states and for the national legislation of Ukraine. This does not make it possible to use them more effectively. In 1995, the Johannesburg Principles (National Security, Freedom of Expression and Access to Information) were developed and adopted. Among them, the principles “All restrictions must be established by law”, “Public interest in declassifying information”, “Protection of the legitimate interests of national security” should be highlighted. Thus, the last principle provides that any restriction on freedom of expression or freedom of information that the government wishes to justify in the interests of national security must actually proceed from this goal and demonstrate conclusively that the restriction will actually affect the protection of legitimate national security interests<sup>51</sup>.

On the issue of access to information in the interests of national security, a document was developed in 2013 called "Global Principles of National Security and the Right to Information". This document proclaims that access to information, providing public control over the activities of the state, serves not only as a guarantee against abuse of public officials, but also allows the public to participate in the determination of public policy and thus forms an essential component of genuine national security, democratic participation and the development of a healthy politicians<sup>52</sup>.

Among the principles important for our study, we should point out the principle of requirements for limiting the right to receive information on national

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<sup>50</sup> Convention on the Protection of Human Rights and Fundamental Freedoms: International document dated 04.11.1950 №995\_004 [viewed date: 04 May 2023]. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>51</sup>National security, freedom of expression and access to information (Johannesburg principles): viewed date: 04 May 2023]. Available from: <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>

<sup>52</sup>The Global Principles on National Security and the Right to Information (The Tshwane Principles) of 12 June 2013 [viewed date: 04 May 2023]. Available from: <https://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>



security. In which it is provided that the restriction of the right to receive information must be established by law. Such a law should provide adequate safeguards against abuse, as well as a prompt, complete, accessible and effective review of the validity of the restriction by an independent oversight body. One other principle in this document should be noted. It is named as the obligation of state bodies to present justification for the legitimacy of any restrictions. This principle means that when fulfilling this obligation it is not sufficient for the public authority to simply state that there is a risk of harm, the authorities are obliged to provide specific, objective reasons to support their assertions<sup>53</sup>.

The right to access public information that is important for national security is guaranteed by such important international documents as the Universal Declaration of Human Rights (Article 19), the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10), the International Covenant on Civil and Political Rights (Article 19), the Recommendation of the Council of Europe No. R(81)19 on access to information held by public authorities, Council of Europe Recommendation No. R(2002) on access to official documents, Convention on access to information, public participation in decision-making and access to justice in matters related to the environment (Aarhus Convention), etc. Thus, the International Covenant on Civil and Political Rights, the provisions of which entered into force for Ukraine on March 23, 1976, stipulates in Article 19 that every person (1) has the right to freely hold his views, (2) has the right to freely express his point of view, which includes freedom to seek, receive and impart any information and ideas, regardless of frontiers, orally, in writing or in print or in the form of art, or through any other media of one's choice. The right to freedom of expression may be restricted, but only on legitimate grounds and solely for one of two possible purposes: (a) to respect the rights and reputations of others; (b) for the protection of national security, public order, public health or morals<sup>54</sup>. Council of

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<sup>53</sup>The Global Principles on National Security and the Right to Information (The Tshwane Principles) of 12 June 2013 [viewed date: 04 May 2023]. Available from: <https://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>

<sup>54</sup> International Covenant on Civil and Political Rights: International document December 16, 1966. № 995\_043. [viewed date: 04 May 2023]. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text)

Europe Recommendation No. R(81)19 on access to information held by public authorities establishes the basic principles of access to information by public authorities, which should guide Member States in their legislation and practice: (1) everyone has the right to obtaining, upon request, information held by public authorities other than the legislature and the judiciary; (2) effective and appropriate means of ensuring access to information should be provided; (3) access to information cannot be denied on the grounds that the requester lacks a particular interest in the matter; (4) access to information is provided on the basis of equality; (5) any request for information must be dealt with within a reasonable time; (6) the need for public authorities to justify the refusal of access to information with reference to legislation or practice; (7) any refusal to provide information must be subject to appeal; (8) in applying the above principles, regard shall be had to the restrictions and prohibitions necessary in a democratic society for the protection of the legitimate interests of the public and for the protection of privacy and other legitimate private interests<sup>55</sup>.

Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the recycling of public sector information sets the task for institutions at every level: local, national or international to make public all public sector documents<sup>56</sup>. It is also necessary to pay attention to the provisions of Directive (EU) 2016/2102 of the European Parliament and of the Council of October 26, 2016 on the accessibility of websites and mobile applications of public sector bodies (Directive 2003/98/EC of the European Parliament and of the Council, 2003)<sup>57</sup>. In accordance with EU rules on public access to documents provided for in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on access to documents of the

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<sup>55</sup> Recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society (Adopted by the Committee of Ministers on November 25, 1981 at the 340th meeting of deputy ministers). [viewed date: 04 May 2023]. Available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804f7a6e>

<sup>56</sup> Directive 2003/98/EC of the European Parliament and the Council of November 17, 2003 on the secondary use of public sector information. viewed date: 04 May 2023]. Available from: [https://zakon.rada.gov.ua/laws/show/984\\_001-03#Text](https://zakon.rada.gov.ua/laws/show/984_001-03#Text)

<sup>57</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies [viewed date: 04 May 2023]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2102&qid=1639085292563>

European Parliament, of the Council and of the Commission<sup>58</sup>, members of the public can contact institutions to request access to specific documents (if they are aware of their existence) or ask the institution to identify documents on a specific subject that they wish to access. If an institution denies access citing one of the exceptions under the said Regulation, persons may ask the institution to reconsider its decision (so-called "confirmation statement"). Individuals who seek public access to documents may apply to the European Ombudsman if the institution has rejected their supporting application in whole or in part. They may argue that the above exceptions do not apply or that there is an overriding public interest in the document(s) being disclosed. They may argue that the above exceptions do not apply or that there is an overriding public interest in the document(s) being disclosed. They may also contact the Ombudsman if the institution does not respond to their requests within the appropriate time frame. The Ombudsman strives to deal with such complaints as quickly as possible and there is an accelerated procedure for this (Regulation (EC) No. 1049/2001 of the European Parliament and the Council, 2001). The UN Parliamentary Assembly believes that the legitimate interest of the state in the protection of official secrets should not be a reason for unreasonable restrictions on freedom of speech and information, international scientific cooperation and the work of lawyers and other human rights defenders. He recalls the importance of freedom of expression and information in a democratic society, which should be free to expose corruption, human rights violations, environmental destruction and other abuses of power<sup>59</sup>. The Council of Europe Convention on Access to Official Documents, which entered into force for Ukraine on December 1, 2020, is the first international document in which states not only recognize the right of access to information, but also agree to ensure such a right and cooperate in the field of access. The

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<sup>58</sup> Regulation (EC) No. 1049/2001 of the European Parliament and the Council of May 30, 2001 on public access to documents of the European Parliament, the Council and the Commission. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R1049&qid=1639061131667>.

<sup>59</sup> Fair trial issues in criminal cases concerning espionage or divulging state secrets: Parliamentary Assembly on 19 April 2007 (17th Sitting) [viewed date: 04 May 2023]. Available from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17535&lang=en>

Convention does not limit the norms of national legislation and international treaties that recognize a broader right of access to such documents<sup>60</sup>.

### **The Practice of the ECtHR in the Rights to access public Information and National Security and its Significance**

The European Court of Human Rights has repeatedly considered the issue of the limits of access to information, the nature of information, as well as the obligation to provide this or that information to citizens that is important for national security. Violation of the right to information in most cases has negative consequences in completely different areas of human life. Consider individual decisions in this area European Court of Human Rights. In particular, the case of *Guja vs. Moldova*, decision of February 12, 2008<sup>61</sup>, which dealt with the issue of disclosure by civil servants of internal information of state bodies and publication in the media. In this case, the ECtHR found a violation of the provisions of Art. 10 of the Convention due to the fact that the said information was of public interest. In this case, the ECtHR found a violation of the provisions of Art. 10 of the Convention due to the fact that the said information was of public interest.

Thus, in the case (*Leander v. Sweden*), judgment of 26 March 1987, the applicant objected to the refusal to disclose personal information from the secret police register, which led to a negative assessment of his suitability for a position in the Swedish Navy. The Court notes that the right to freedom of information basically prohibits the Government from preventing any person from obtaining information that others wish or may wish to communicate. Given the circumstances of this case, Article 10 ECHR does not give an individual the right to access a register containing information about his personal situation, and does not impose an obligation on the Government to communicate this information to an individual. Consequently, the Court does not consider that there has been an interference with Mr Leander Leander's freedom to receive information under Article 10 of the Convention. According to the ECtHR, on the basis of the fact that the information given to the military was not communicated to Leander, it cannot be concluded that the interference was not "necessary in a

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<sup>60</sup> Council of Europe Convention on Access to Official Documents: international document 18.06.2009 № 994\_001-09 [viewed date: 04 May 2023]. Available from: [https://zakon.rada.gov.ua/laws/show/994\\_001-09#Text](https://zakon.rada.gov.ua/laws/show/994_001-09#Text).

<sup>61</sup> *GUJA v. MOLDOVA* [viewed date: 04 May 2023]. Available from: <https://www.5rb.com/case/guja-v-moldova/>

democratic society in the interests of national security”, since it was the lack of communication, at least in part, ensures the effectiveness of the personnel screening procedure. This is because, according to the Swedish legal system, Sweden, the Personnel Verification Ordinance contains a number of provisions designed to reduce the level of influence of the personnel verification procedure to an unavoidable minimum. The respondent Government were entitled to consider that in the case the interests of national security outweighed the private interests of the applicant<sup>62</sup>.

Also, in the case, *Sîrbu and Others v. Moldova*, decision of 15 June 2004, the applicants complained that the State had not made public the government's decision on the military, intelligence services and the Ministry of the Interior to increase the wages of employees of such agencies. The Court reiterates the position that the freedom to receive information referred to in Article 10 § 2 of the ECHR essentially prohibits the Government from preventing any person from obtaining information that others wish or may wish to communicate. That is, he reiterated the same considerations as in the *Leander v. Sweden* case. In this case, the ECtHR found that Article 10 did not provide that, in circumstances such as this case, a State has a positive obligation to disclose to the public any secret documents or information relating to its military, intelligence services or police. Consequently, the Court unanimously declared inadmissible the applicants' complaints under Art. 10 Conventions<sup>63</sup>.

In the case, *Roche v. the United Kingdom*, Judgment of 19 October 2005, European Court of Human Rights found that failure to comply with an effective and accessible procedure for accessing medical records in the United Kingdom military constituted a violation of the right to information in terms of the right to privacy. After the ex-soldier began having health problems, he sought access to records to determine if the chemical weapons tests he underwent while serving in the military had any effect on his current health problems. After repeated objections and shredded disclosures by the Department of Defense, the former serviceman went to court. The principle of freedom of information

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<sup>62</sup> CASE OF LEANDER v. SWEDEN. [viewed date: 04 May 2023]. Available from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22LEANDER%22%2C%22itemid%22:%5B%22001-57519%22%5D%7D>}.

<sup>63</sup> CASE OF SÎRBU AND OTHERS v. MOLDOVA. [viewed date: 04 May 2023]. Available from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22S%26%20C%26%20RBU%22%2C%22itemid%22:%5B%22001-61819%22%5D%7D>}.

prohibits any government from restricting an individual from receiving information that others are willing or able to disseminate. This freedom cannot be interpreted as a positive obligation imposed on the State - in circumstances like those of the applicant's case - to disseminate information. Therefore, in the present case there was no act of State interference with the applicant's exercise of his right to be informed, as protected by Article 10 of the Convention. However, the Court observes that the respondent State failed in its positive obligation to provide for an efficient and accessible procedure by which the applicant would be provided with access to important and appropriate information enabling him to assess any danger he posed through his participation in the testing of chemical gases. The non-disclosure of information sufficiently affected the ability of the former soldier to understand the reasons for his state of health and that his right to private and family life was violated. The ECHR concluded that there was a violation of the requirements of Article 8 of the Convention on this issue in the case (adopted unanimously)<sup>64</sup>.

In the case, *Sdružení Jihočeské Matky v. the Czech Republic*, decision of 10 July 2006, an environmental NGO appealed against the Czech authorities' refusal to provide access to documents and plans for a nuclear power plant. Since the Czech authorities had sufficiently substantiated their refusal to grant access to the requested documents, the Court did not find a violation of Article 10 ECHR in this case. The refusal was justified in the interests of protecting the rights of others (industrial secrets), national security (risk of terrorist attacks) and public health. Although this case was unsuccessful on the facts and the application was declared inadmissible, the Court expressly recognized that the refusal of the Czech authorities must be regarded as an interference with the right to receive information guaranteed by Art. 10 of the Convention. This admissibility decision is, however, important because it contains an explicit and undeniable recognition of the application of Art. 10 of the Convention in cases of rejection of a request for access to official documents<sup>65</sup>.

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<sup>64</sup> CASE OF ROCHE v. THE UNITED KINGDOM. [viewed date: 04 May 2023]. Available from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%7B%22ROCHE%20v.%20THE%20UNITED%20KINGDOM%22%7D%22itemid%22:%7B%22001-70662%22%7D%7D>

<sup>65</sup> RIEKKINEN, Mariya, and SUKSI Markku. Access to information and documents as a human right. 2015. [viewed date: 04 May 2023]. Available from: <https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf>

In *Kenedy v. Hungary*, judgment of 26 May 2009, the applicant, Mr Janos Kennedy, a historian, challenged before the Court the unwillingness of the authorities to comply with a court order granting him unrestricted access to certain documents held by the Ministry of the Interior on the functioning of the Hungarian State Security Service (para. 7). For a couple of years, Kennedy tried to get access to relevant information from the ministry. Finally, he received a court order to grant access. However, the Department continued to obstruct him, such as requiring Kennedy to sign a confidentiality right. The Court criticized the Ministry's absolute refusal to facilitate access to the requested information and noted that "access to original documentary sources for legitimate historical research was an essential element in the exercise of the applicant's right to freedom of expression" (para. 43). The Court concluded that the authorities had acted arbitrarily and contrary to domestic law. The Court concluded that the authorities had acted arbitrarily and contrary to domestic law. Their obstructive actions led to the conclusion of a violation of Article 6 § 1 of the Convention (right to a fair trial). Thus, the Court held that the authorities had abused their powers by delaying Mr. Kennedy in exercising his right to freedom of expression, in violation of Article 10". It follows that there has been a violation of Article 10 of the Convention" (para. 45)<sup>66</sup>.

In the case, *Bucur and Toma v. Romania*, judgment of 8 January 2013, there were three applicants. The first, Constantin Bucur, worked in the Romanian Intelligence Service in the telephone surveillance department. From this position, he learned about the illegal wiretapping by the Romanian Intelligence Service, and in 1996 organized a press conference, making public several audio recordings of telephone conversations of politicians, journalists, minors and others, as evidence of the fact of illegal surveillance, which he noted. The first plaintiff was later convicted by a military court for filming audio recordings and making public information obtained through his work. In relation to him, the Court found a violation of Article 6 (right to a fair trial), Article 10 (freedom of expression) and Article 13 (effective remedy) of the Convention.

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<sup>66</sup> CASE OF KENEDI v. HUNGARY. [viewed date: 04 May 2023]. Available from: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22KENEDI%20v.%20HUNGARY%22\],\[%22itemid%22:\[%22001-92663%22}\]](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22KENEDI%20v.%20HUNGARY%22],[%22itemid%22:[%22001-92663%22}]).

In essence, the Court assessed that the first applicant had been erroneously convicted of divulging information while he had presented a number of unlawful acts to the public in good faith. The Court decided that the general interest in informing the public about the illegal activities of the Romanian Intelligence Service was more important than the interest in maintaining public confidence in the Romanian Intelligence Service. In addition, the Court held that the domestic courts found the first applicant guilty after an unfair trial in which substantial evidence for the defense was rejected by a partial panel. Consequently, the ECtHR held that if a public official raises concerns about illegal surveillance of the public, provided that the disclosure is made in good faith, the government cannot dismiss the employee and thus violate their freedom of expression under the ECtHR<sup>67</sup>.

In *Youth Initiative for Human Rights v. Serbia*, Judgment of 25 June 2013, the ECtHR held that Serbia violated Article 10 ECHR when, at the request of the NGO Youth Initiative for Human Rights, it refused to provide access to information held by the Serbian Intelligence Agency. The organization filed a request under the Serbian Freedom of Information Act, and the information commissioner ruled that Serbia should make the records public. Serbia's Supreme Court refused to hear the appeal, but the government has yet to release the tapes. The ECtHR ruled that the denial of access to information of public interest prevents an organization from fulfilling its role as a "public watchdog". The exercise of the right to access to information may be restricted, but the ECtHR found no grounds for restricting this right in this case<sup>68</sup>. Thus, the question of the possibility of access and disclosure of this or that information that is important for national security is often submitted to the ECtHR for consideration, but each time the court makes a decision based on the specific circumstances of the case, without having any specific criteria and requirements for openness information.

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<sup>67</sup> Bucur and Toma v Romania. *European Court of Human Rights*. 2013. [viewed date: 04 May 2023]. Available from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Bucur%20and%20Toma%22%5D,%22itemid%22:%5B%22002-7395%22%5D%7D>.

<sup>68</sup> Youth Initiative for Human Rights v. Serbia, рішення від 25 червня 2013 року. [viewed date: 04 May 2023]. Available from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Youth%20Initiative%20for%20Human%20Rights%22%5D,%22itemid%22:%5B%22001-120955%22%5D%7D>.



## 5. Conclusion and Recommendations

Building a modern information society is inextricably linked not only with the legal regulation of the human right to information that is of interest to national security, but also with further experience in implementing various aspects of this right in practice. Proper legal support for the realization of the human right to information that is important for national security is one of the fundamental indicators of the democracy of the state and society. Any restrictions on this human right should be exceptions that require additional and clear justification at the legislative level.

In particular, in the context of the problem under study, the ECHR concluded that the requirements of Article 8 of the ECHR were violated, it was also noted that the right to private and family life was violated in the case *Roche v. the United Kingdom*, 2005 the ECHR did not find violations of Article 10 of the ECHR in the case *Leander v. Sweden*, 1987, *Sîrbu and Others v. Moldova*, 2004, *Youth Initiative for Human Rights v. Serbia*, 2013.

In the case, *Sdruženi Jihočeské Matky v. the Czech Republic*, 2006, the Court did not find a violation of Article 10 ECHR, and the judgment was based on the interests of protecting the rights of others (industrial secrets), national security (risk of terrorist attacks) and public health. In the case, *Kenedi v. Hungary*, 2009, the Court found a violation of Article 6 § 1 of the Convention (right to a fair trial) and the right to freedom of expression, a violation of Article 10 of the Convention, in *Bucur and Toma v. Romania*, 2013, the Court found a violation of Article 6 (right to a fair trial), Article 10 (freedom of expression) and Article 13 (effective remedy) of the Convention.

In the national legislation regarding the implementation of the right to access to information that is important for national security, it is desirable (1) the definition of the procedure for applying the "three-complex test" should be enshrined in the Law of Ukraine "On Access to Public Information"; (2) provide in the Law of Ukraine "On Access to Public Information" that in case of restriction of access to any information contained in an official document, the public authority must nevertheless provide access to the rest of the information contained in it. This rule is provided for in the Council of Europe Convention on Access to Official Documents (Part 2 Art. 6) Ukraine has ratified this document since December 1, 2020; (3) it is desirable to provide for increased punishment

not only for the disclosure of information, but also for incomplete, untimely disclosure of such information (one of the options for liability is to increase the amount of fines). Also, for the effective regulation and implementation of this human right, there is a need to comply with international norms and principles, international legal obligations, using the priority of the principle of respect for human rights.

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