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## Exercise of the Right to Access to Public Information: Administrative and Legal Mechanism

### 1. Introduction

Modern globalized society and the level of development of public administration is characterized by a significant increase in the role of information and relevant technologies. This leads to the intensification of information activities on the receipt, use, dissemination and storage of data.

The right of citizens to access public information held by state authorities, local governments, and their officials in order to exercise their constitutional rights is one of the fundamental principles of a democratic society and a key indicator of the transparency of public authority. V.V. Kashka emphasizes that a person's ability to freely collect, store, process and disseminate information is ensured not only by fixing the right to information in law, but also by creating the necessary conditions for its implementation – guarantees of the exercise of this right<sup>2</sup>.

The concept of e-government development in Ukraine stipulates that one of such mechanisms for exercising the right to access information

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<sup>2</sup> Kashka, V.V. (2019) Dostup do publichnoi informatsii v orhanakh prokuratury: administratyvno-pravovy aspekt [Access to public information in the prosecutor's office: administrative and legal aspect] *Candidate's thesis*. Uzhhorod: DVNZ "Uzhhorodskyyi natsionalnyi universytet". [in Ukrainian].

held by public authorities is the disclosure of public information in the form of open data for free use in accordance with the Law of Ukraine “On Access to Public Information”. as well as increase the transparency of such bodies, ensure the free circulation of information and the possibility of its further use in order to realize personal rights and freedoms of man and citizen, develop innovation and stimulate economic activity, as well as prevent and expose corruption<sup>3</sup>.

The modernity of legal support and the practice of law enforcement of access to public information in Ukraine indicates positive trends in this area. Thus, according to the Parliamentary Commissioner for Human Rights in 2019, there were 23% fewer reports of violations of the right to access public information compared to 2018 – from 4,201 to 3,237<sup>4</sup>.

In our opinion, this is one of the examples of positive manifestations of harmonization of public relations in the field of realization of the right of access to public information. At the same time, a significant number of violations of the relevant rules for ensuring access to public information are still recorded, which is also due to the insufficient level of scientific research on these issues. Therefore, within the framework of this article the legal bases of ensuring the realization of the right of access to public information are investigated, the features and elements of the corresponding administrative-legal mechanism are determined.

## 2. Legal principles

Laws on access to public information, says G.V. Kadnikova, exist in most democracies, and they are a real legal mechanism for the exercise of one

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<sup>3</sup> Rozporiadzhennia Kabinetu Ministriv Ukrainy Pro skhvalennia Kontseptsii rozvytku elektronnoho uriaduvannia v Ukraini [Order of the Cabinet of Ministers of Ukraine On approval of the Concept of e-government development in Ukraine]: (2017, September 20). Uriadovi kurier – Government courier, 181. [in Ukrainian].

<sup>4</sup> Shchorichna dopovid Upovnovazhenoho Verkhovnoi rady Ukrainy z prav liudyny pro stan doderzhannia ta zakhystu prav i svobod liudyny i hromadianyna v Ukraini [Annual report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine]. (2019). (n.d.). <http://www.ombudsman.gov.ua>. Retrieved from <http://www.ombudsman.gov.ua/ua/page/informright> [in Ukrainian].

of the basic human rights – the right of access to public information<sup>5</sup>. This is the implementation of the requirements of European legislation and a necessary condition for integration into the European Community.

The international legal framework that defines the content of the right of access to public information and the means to ensure it are contained in such documents as the Universal Declaration of Human Rights of 1948<sup>6</sup>; Model Law on Freedom of Information of the International Non-Governmental Organization “Article 19”<sup>7</sup>; European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>8</sup>; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)<sup>9</sup>; Okinawa Charter of the Global Information Society<sup>10</sup>; Strasbourg Con-

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<sup>5</sup> Kadnykova, H.V. (2019) Pravovyi rezhym dostupu do publichnoi informatsii: administratyvno-pravovyi aspekt [Legal regime of access to public information: administrative and legal aspect] *Candidate's thesis*. Zaporozhye: ZNU [http://phd.znu.edu.ua/page/dis/07\\_2019/Kadnykova.pdf](http://phd.znu.edu.ua/page/dis/07_2019/Kadnykova.pdf). [in Ukrainian].

<sup>6</sup> Zahalna deklaratsiia prav liudyny 1948 r. Informatsiine zakonodavstvo: zb. zakonodav. aktiv: u 6 t. [Universal Declaration of Human Rights 1948. Information legislation: Coll. legislation. acts: in 6 volumes] (2005). Shemshuchenko, Yu. S., & Chizha, I.S. (Ed.). Kyiv: Jurid. Dumka [in Ukrainian].

<sup>7</sup> Modelnyi zakon pro svobodu informatsii mizhnarodnoi neuriadovoi orhanizatsii «Artykl 19» [Model Law on Freedom of Information of the International Non-Governmental Organization “Article 19”] (2008). International standards for ensuring freedom of expression: Coll. publications of Article 19 / ed. Shevchenko, T., & Oleksiyuk T. Kyiv: Phoenix. [in Ukrainian].

<sup>8</sup> Yevropeiska konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod [European Convention for the Protection of Human Rights and Fundamental Freedoms]. (1950, November 4). Retrieved from [http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995\\_004](http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_004) [in Ukrainian].

<sup>9</sup> Konventsiiia pro dostup do informatsii, uchast hromadskosti v protsesi pryiniattia rishen ta dostup do pravosuiddia z pytan, shcho stosuiutsia dovkillia: : ratyfikovana Zakonom № 832-XIV vid 6 lypnia 1999 r. [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: : ratified by Law № 832-XIV of July 6, 1999] (2001, January 1). Legal regulation of information activities in Ukraine. Demsky; S.E., & Pavlyuk, S.P. (Ed.). Kyiv: Yurinkom Inter (pp. 62–67). [in Ukrainian].

<sup>10</sup> Okinavska khartiia hlobalnoho informatsiinoho suspilstva [Okinawa Charter of the Global Information Society] (2000, July 22). Retrieved from [http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=998\\_163](http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=998_163) [in Ukrainian].

vention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>11</sup>; The Convention on Cybercrime; Council of Europe Recommendation 1981 N° R (81) 19 "On access to information held by public authorities"<sup>12</sup>.

Determining the right to information and providing access to it, emphasizes GV Kadnikov, was first reflected in the UN Universal Declaration of Human Rights in 1948, which establishes the right of every person to freedom to seek, receive and impart information and ideas in any way that does not prejudice the rights and legitimate interests of other parties, without limitation. established state borders (Article 19).

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, according to OO Dubrov, state that everyone has the right to freedom of expression and that this right includes freedom to seek, receive and impart information and ideas of any kind. regardless of state borders, orally, in writing or through print or artistic forms of expression or in other ways of their choice<sup>13</sup>.

The right to receive and impart information and ideas without interference by public authorities and regardless of frontiers is enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms.

In accordance with Recommendations N° 854 and N° R (81) 19, the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers of the Council of Europe propose to member

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<sup>11</sup> Strasburzka konvetsiia pro zakhyst osib stosovno avtomatyzovanoi obrobky danykh osobystoho kharakteru [Strasbourg Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data] (1981, 28 January) Retrieved from <http://conventions.coe.int/Treaty/EN/Treaties/PDF/Ukrainian/108-Ukrainian.pdf> [in Ukrainian].

<sup>12</sup> Rekomendatsiia N° R (81) 19 pro dostup do informatsii, shcho znakhodytsia u rozporiadzhenni derzhavnykh orhaniv: pryiniata Komitetom Ministriv 25 lystopada 1981 na 340-y zustrichi zastupnykiv ministriv [Recommendation N° R (81) 19 on access to information available to public authorities: adopted by the Committee of Ministers on 25 November 1981 at the 340th meeting of the Ministers' Deputies] *Institute of Media Law*. Retrieved from [http://www.medialaw.kiev.ua/laws/laws\\_international/116](http://www.medialaw.kiev.ua/laws/laws_international/116) [in Ukrainian].

<sup>13</sup> Dubrov, O.O. (2012) Realizatsiia prava na dostup do publichnoi informatsii [Exercise of the right to access public information]. *Visnyk - Herald*, 48. Retrieved from : <http://www.visnuk.com.ua/ua/pubs/id/4599> [in Ukrainian].

states that have not yet done so to introduce a system of freedom of information, ie access to institutions and agencies, the right to review and correct personal files, the right to privacy, as well as the right to prompt consideration in court of these issues. Dubrov O.O. considers that this requirement is not only due to the fact that parliamentary democracy can only function adequately when the people as a whole and their elected representatives are fully informed; the fact that public access to information implies the strengthening of public confidence in public administration, and the fact that public ministries and agencies often generate and possess information that cannot be obtained from other sources. This allowed to establish the basic principles of access to information of government agencies at all levels<sup>14</sup>.

The list of principles for access to information has been expanded and improved by Recommendation Rec (2002) 2. Thus, the following has been added to the group of these principles: the right of a person not to explain the reasons for his request for access to an official document; minimization of formalities during the request; maximum reduction of terms of consideration of each request for access to the official document; the obligation of a public authority to provide all information to which there is no restriction of access; the right of access to official documents, disclosure of information available to public authorities, etc <sup>15</sup>.

The Convention of the Council of Europe, notes O.O. Dubrov, guarantees both individuals and legal entities the right to access official documents in the possession of public authorities. The list of public bodies includes the central government and administration at the national, regional and local levels, the legislature and the judiciary in the exercise of administrative functions, as well as natural or legal persons, ie private law entities, but only in the exercise of administrative functions in the case of delegation of such powers by the authorities. At the same time, according to the Council of Europe Convention, official documents

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<sup>14</sup> Dubrov, O.O. (2012) Realizatsiia prava na dostup do publichnoi informatsii [Exercise of the right to access public information]. *Visnyk - Herald*, 48. Retrieved from : <http://www.visnuk.com.ua/ua/pubs/id/4599> [in Ukrainian].

<sup>15</sup> Dubrov, O.O. (2012) Realizatsiia prava na dostup do publichnoi informatsii [Exercise of the right to access public information]. *Visnyk - Herald*, 48. Retrieved from : <http://www.visnuk.com.ua/ua/pubs/id/4599>. [in Ukrainian].

should be understood as any information recorded in any form, generated, obtained or in the possession of public authorities<sup>16</sup>.

Concretization of the elements of the mechanism of access to public information has become a necessity caused by the level of technical progress. An example of an international legal act that clarified the content of public information and the procedure for accessing it was the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters<sup>17</sup>.

These international documents laid the foundation for the formation of legal mechanisms for their implementation in Ukrainian legislation. The basis of legal regulation of the right to information in Ukraine is the Constitution of Ukraine, the constitutional guarantees of such a right are enshrined in Articles 32, 34, 40 and 50. The right of access to information is provided by Art. 34 of the Constitution of Ukraine, namely: the right of everyone to freedom of thought and speech, to freely express their views and beliefs, the right to freely collect, store, use and disseminate information orally, in writing or otherwise of their choice. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to maintain authority and impartiality of justice<sup>18</sup>.

In order to ensure transparency and openness of the subjects of power, the creation of mechanisms for the exercise of the right of everyone

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<sup>16</sup> Dubrov, O.O. (2012) Realizatsiia prava na dostup do publichnoi informatsii [Exercise of the right to access public information]. *Visnyk - Herald*, 48. Retrieved from : <http://www.visnyk.com.ua/ua/pubs/id/4599>. [in Ukrainian].

<sup>17</sup> Konventsiia pro dostup do informatsii, uchast hromadskosti v protsesi pryiniattia rishen ta dostup do pravosuiddia z pytan, shcho stosuiutsia dovkillia: : ratyfikovana Zakonom № 832-XIV vid 6 lypnia 1999 r. [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: : ratified by Law № 832-XIV of July 6, 1999] (2001, January 1). Legal regulation of information activities in Ukraine. Demsky; S.E., & Pavlyuk, S.P. (Ed.). Kyiv: Yurinkom Inter (pp. 62–67) [in Ukrainian].

<sup>18</sup> Konstytutsiia Ukrainy: : Zakon Ukrainy vid 28.06.96 r. [Constitution of Ukraine: Law of Ukraine of June 28, 1996. ] (1996, June 28). *Vidomosti Verkhovnoi Rady Ukrainy - Information of the Verkhovna Rada of Ukraine*. 30. Article 141. [in Ukrainian].

to access information held by the subjects of power, other managers of public information and information of public interest, the Law of Ukraine "On access to public information"<sup>19</sup>.

According to G.V. Kadnikova of the Law of Ukraine "On Access to Public Information" became a guarantee of transparency of the public administration system, stipulating that any person has the right to receive information on the results of the subjects of power, as well as to obtain information from unified information registers to the competence of the relevant state authorities, local governments or other entities – managers of public information<sup>20</sup>.

In pursuance of the provisions of this Law and Decree № 547 "Issues of Ensuring Access to Public Information by Executive Bodies"<sup>21</sup>, a number of state bodies and subdivisions have been established in most public authorities to ensure the exercise of the right of access to public information. At the same time, a number of normative legal acts were adopted, which determine the procedure for exercising the right of access to public information.

### 3. Current state and shortcomings

At the current level, ensuring the right of access to public information is ensured by systematic and prompt publication of information in official publications, on official websites on the Internet, on information stands, in any other way, as well as providing information upon request for information. The most common is the publication of public information on the websites of public authorities.

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<sup>19</sup> Zakon Ukrainy Pro dostup do publichnoi informatsii [Law of Ukraine On Access to public information] (2011, January 13). *Vidomosti Verkhovnoi Rady Ukrainy – Information of the Verkhovna Rada of Ukraine*, 32. Art. 314 [in Ukrainian].

<sup>20</sup> Zakon Ukrainy Pro dostup do publichnoi informatsii [Law of Ukraine On Access to public information] (2011, January 13). *Vidomosti Verkhovnoi Rady Ukrainy – Information of the Verkhovna Rada of Ukraine*, 32. Art. 314 [in Ukrainian].

<sup>21</sup> Pytannia zabezpechennia orhanamy vykonavchoi vlady dostupu do publichnoi informatsii: Ukaz Prezydenta Ukrainy [Issues of providing executive authorities with access to public information: Decree of the President of Ukraine]. (2011, May 5) Retrieved from <https://zakon.rada.gov.ua/laws/show/547/2011#Text> [in Ukrainian].

Monitoring of information content of official websites of executive bodies is carried out in compliance with the resolution of the Cabinet of Ministers of Ukraine dated 29.08.2002 № 1302 “On measures to further ensure openness in the activities of executive bodies” and in accordance with the Procedure of Derzhkomtelradio monitoring of information content of official websites executive power, approved by the order of the State Committee for Television and Radio Broadcasting of Ukraine dated 08.06.2015 № 118, registered in the Ministry of Justice of Ukraine on 25.06.2015 for № 759/27204.

According to the results of monitoring the official websites of 18 ministries and 47 other central executive bodies (a total of 65 websites) conducted in April-June 2020, the State Committee for Television and Radio Broadcasting found that the average value of information transparency is 89.27%; 41 websites have above-average information transparency, 24 websites have below-average information transparency; the maximum value of the indicator of information transparency are the websites of: the State Financial Monitoring Service of Ukraine, the Administration of the State Border Guard Service of Ukraine and the State Service of Ukraine for Medicines and Drug Control (100%); The website of the National Commission on Securities and Stock Market has the lowest value of information transparency (62.94%).

Derzhkomtelradio also analyzed 25 official websites of local executive bodies, namely 24 regional and Kyiv city state administrations. According to the results of the analysis of information transparency indicators on the official websites of local executive bodies, it was found out: the average value of the information transparency indicator is 95.43%; 21 websites have information transparency indicators higher than average; information transparency indicators of 4 websites are lower than average; websites of Dnipropetrovsk, Ivano-Frankivsk, Khmelnytsky, Volyn, Zakarpattia, Rivne, Kherson regional state administrations have the maximum value of the indicator of information transparency (100%); the official website of the Luhansk Regional State Administration has the lowest value of information transparency (74.24%).

It was also found that as a result of optimizing the system of public authorities, new bodies were formed. As of June 23, 2020, there are no websites of the following central executive bodies: the State Agency for



Infrastructure Projects of Ukraine, the State Customs Service of Ukraine, the State Social Service of Ukraine, the State Service for Cultural Heritage Protection of Ukraine, the State Service for Urban Development of Ukraine, the State Service for Ethnopolitics and Freedom of Conscience, State Agency of Ukraine for Arts, Agency for Public Debt Management of Ukraine, State Agency for Tourism Development of Ukraine, State Agency of Ukraine for Art Education, State Inspectorate for Cultural Heritage of Ukraine, State Inspectorate for Urban Development of Ukraine, National Commission on State Language Standards.

The monitoring revealed a number of problems that negatively affect the implementation of the right of citizens to access public information, namely:

- 1) the absence of the date of placement of information, which makes it impossible to establish the relevance of the information;
- 2) the lack of navigational accessibility, which determines the level of simplicity and convenience of finding information on the website and depends on the transparency of the information structure of the website;
- 3) the lack of availability of information on websites for the perception of persons with visual and hearing impairments;
- 4) search engines on sites do not work;
- 5) lack of data on the structure of the central body of executive power, missing functions of structural subdivisions, contact information of heads of structural subdivisions is absent or not updated in time
- 6) need to update the public information accounting system. Instead, the presented accounting systems are often updated irregularly, containing information about only a part of the documents that are in the possession of the subjects of power, for example, often there is no information about incoming and outgoing correspondence;
- 7) On the websites of some local executive bodies there is a low level of information on institutions and establishments of the social sphere, utilities, law enforcement agencies located in the relevant administrative-territorial unit, their addresses, telephone numbers and work schedules, etc<sup>22</sup>.

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<sup>22</sup> Аналітична довідка за результатами проведеного Дерзжкомтелерадіо мониторингу інформатиного наповнення офіційних веб-сайтів орханів виконавчої влади у пер-

In addition to the shortcomings of the websites of public authorities, which due to technical shortcomings limit the implementation of the right of citizens to access public information, there are also problems of organizational and legal nature. Thus, in 2019, the VRU Commissioner for Human Rights received 10,937 notifications of violations of the rights to access and access to information, as a result of which 142 monitoring visits were made, 107 informational and educational events were held, and drafted and with the active assistance of the public and the international community. sent to court 286 protocols on administrative offenses based on the results of violations of the laws of Ukraine “On citizens’ appeals” of October 2, 1996 № 393/96-VR and “On access to public information” of January 13, 2011 № 2939-VI<sup>23</sup>.

Monitoring compliance with the right of access to public information in 2019 shows a decrease in the number of cases of providing public information on the merits of the request, improving the practice of interaction of information managers with its requesters in terms of reimbursement of actual costs for copying and printing documents, and awareness of managers information in the form of open data, ie in a format that allows automated processing of such data for reuse to increase transparency and openness, assist in the fight against corruption, improve the investment climate, especially at the regional level. At the same time, there are still cases of violation of the right to information, which can be grouped as follows<sup>24</sup>.

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shomu pivrichchi 2020 roku [Analytical reference based on the results of the monitoring of the information content of the official websites of the executive authorities in the first half of 2020 by the State Committee for Television and Radio Broadcasting]. (n.d.). <http://comin.kmu.gov.ua>. Retrieved from [http://comin.kmu.gov.ua/control/uk/publish/article?art\\_id=167745&cat\\_id=112507](http://comin.kmu.gov.ua/control/uk/publish/article?art_id=167745&cat_id=112507) [in Ukrainian].

<sup>23</sup> Shchorichna dopovid Upovnovazhenoho Verkhovnoi rady Ukrainy z prav liudyny pro stan doderzhannia ta zakhystu prav i svobod liudyny i hromadianyna v Ukraini [Annual report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine]. (2019). (n.d.). <http://www.ombudsman.gov.ua>. Retrieved from <http://www.ombudsman.gov.ua/ua/page/informright> [in Ukrainian].

<sup>24</sup> Shchorichna dopovid Upovnovazhenoho Verkhovnoi rady Ukrainy z prav liudyny pro stan doderzhannia ta zakhystu prav i svobod liudyny i hromadianyna v Ukraini [Annual report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on the state of observance and protection of human and civil rights and freedoms in

1. Failure to provide or incomplete provision of information by state and communal enterprises, joint-stock companies on the disposal of budget funds, state and communal property.
2. Failure to provide information of public interest.
3. Unreasonable classification of information as confidential, which mainly relates to the performance of powers by persons holding positions related to the performance of state or local government functions.
4. Non-application of the “three-part test”, ie ignoring the requirements for justification when restricting access to certain public information when considering requests.
5. Non-disclosure and incomplete disclosure of information, the mandatory disclosure of which is provided by the laws of Ukraine.
6. Low level of access to public information at the local level, in particular that managed by local governments.

In total, in 2019, 254 protocols on administrative offenses were drawn up and sent to court, which is one of the mechanisms for restoring violated rights, based on the identified violations in the field of access to information, including the results of 121 monitoring visits to information managers<sup>25</sup>.

#### 4. Administrative and legal mechanism

The above information indicates an imbalance of the administrative and legal mechanism for ensuring the exercise of the right of access to public information, which in our opinion is a consequence of the uncertainty of the concept of the relevant mechanism. Researchers have studied some aspects and some elements of the administrative and legal mechanism for ensuring the exercise of the right of access to public information:

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Ukraine]. (2019). (n.d.). <http://www.ombudsman.gov.ua>. Retrieved from <http://www.ombudsman.gov.ua/ua/page/informright> [in Ukrainian].

<sup>25</sup> Shchorichna dopovid Upovnovazhenoho Verkhovnoi rady Ukrainy z prav liudyny pro stan doderzhannia ta zakhystu prav i svobod liudyny i hromadianyna v Ukraini [Annual report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine]. (2019). (n.d.). <http://www.ombudsman.gov.ua>. Retrieved from <http://www.ombudsman.gov.ua/ua/page/informright> [in Ukrainian].

To clarify the meaning of the concept of “administrative and legal mechanism for ensuring rights” it is necessary to cite the position of P.O. Shorski, who singled out the features of this legal category: a) includes means of both legal and organizational nature; b) the subject of implementation are specially authorized persons, as a rule, representatives of public authorities; c) the direct effect of the mechanism of such provision provides for the formation of guarantees for the realization of human rights and freedoms; d) all activities related to the implementation of the mechanism of administrative and legal support of the rights and freedoms of citizens and its further functioning are carried out within and on the basis of administrative and legal norms; e) the intermediate purpose of the functioning of this mechanism is to create conditions under which it becomes possible for citizens to fully and unhindered exercise their rights; e) the ultimate goal of the mechanism is to regulate the legal relations that are formed in the field of human rights and freedoms<sup>26</sup>. Peculiarities of the administrative-legal mechanism of ensuring the realization of the right to access public information are also revealed through its elements, the identification of which will be based on the generalization of scientific approaches to similar mechanisms in other spheres.

In general, such scientists as T.M. Zavorotchenko O.V. Negodchenko, N.V. Pilgun, Ya. V. Lazur, R.I. Zuev, V.V. Plyska, M.V. Frolkov, I.O. Jerusalemova distinguish the following elements of the administrative-legal mechanism of ensuring various rights: 1) guarantees – as a legal means of ensuring, realization, protection and defense of human and civil rights<sup>27</sup>; 2) administrative and legal norms, conditions, means<sup>28</sup>; 3) objects (rights and freedoms) 4) subjects (bodies of public administration), administrative

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<sup>26</sup> Shorskiy, P.O. (2018) *Administratyvno-pravovyi mekhanizm zabezpechennia vyborchikh prav hromadian v Ukraini* [Administrative and legal mechanism for ensuring the voting rights of citizens in Ukraine]. *Candidate's thesis*. Sumy: Sumskyi derzhavnyi universytet [in Ukrainian].

<sup>27</sup> Zavorotchenko, T. M. (2007) *Konstytutsiino-pravovi harantii prav i svobod liudyny y hromadianyna v Ukraini* [Constitutional and legal guarantees of human and civil rights and freedoms in Ukraine]. Dnipro: Dnipropetrovsk Publishing House. nat. University [in Ukrainian].

<sup>28</sup> Ierusalimova, I.O., Ierusalimov, I.O., Pavlyk, P.M., & Udovenko, Zh.V. (2007) *Administratyvno-pravove zabezpechennia prav i svobod liudyny ta hromadianyna* [Administrative and legal support of human and civil rights and freedoms]. Kyiv: Znannia [in Ukrainian]. P. 98

and legal means<sup>29</sup>; 5) administrative and legal acts; acts of application of legal norms; acts of interpretation of administrative norms, individual legal documents; 6) administrative legal relations; legal facts; subjective rights and legal obligations; 7) legal awareness of subjects<sup>30</sup>; 8) responsibility<sup>31</sup>.

This indicates the lack of sustainable approaches to determining the elements of the administrative and legal mechanism to ensure the realization of rights. In our opinion, a generalized idea of the interaction of these elements in the structure of the administrative and legal mechanism for ensuring rights was presented by P.O. Shchorsky, who singled out: object, subjects, content and auxiliary elements. Under the object of administrative and legal support of citizens' rights, this scientist understands a certain area in which certain legal relations are formed, which require appropriate support, which outlines the "scope" of the mechanism, establishes its framework. The subject of such a mechanism, this scientist identifies public authorities. Since P.O. Shchorsky studied the issue of ensuring suffrage, then the content of the mechanism of administrative and legal support of these rights of citizens, he attributed the principles of ensuring the suffrage of citizens, administrative law, administrative law, legal guarantees, administrative forms and methods

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<sup>29</sup> Zuev, R. I. (2011) Shchodo mekhanizmu administratyvno-pravovoho zabezpechennia prav i svobod liudyny [On the mechanism of administrative and legal support of human rights and freedoms]. *Yurydychna Ukraina – Legal Ukraine*. 8. 46–51. [in Ukrainian].

<sup>30</sup> Plyska, V. V. Poniattia ta elementy administratyvno-pravovoho mekhanizmu zabezpechennia prav i svobod hromadian u sferi zapobihannia ta protyidii koruptsii [The concept and elements of the administrative and legal mechanism for ensuring the rights and freedoms of citizens in the field of preventing and combating corruption]. *Naukovyi visnyk UzhNU. Serija «Pravo»*. – *Scientific Bulletin of Uzhhorod National University. Law series*. 35. Part 1. Vol 2. 143–147 [in Ukrainian]. P. 147

<sup>31</sup> Frolkov, M. V. (2013) Mekhanizm administratyvno-pravovoho zabezpechennia zakhystu prav spozhyvachiv [The mechanism of administrative and legal support for consumer protection]. *Publichne pravo – Public law*. 2. 314–320. [in Ukrainian]. Nehodchenko, O. V. (2004) Zabezpechennia prav i svobod liudyny orhanamy vnutrishnikh sprav [Ensuring human rights and freedoms by internal affairs bodies: organizational and legal principles]: *Extended abstract of Doctor's thesis*. Kharkiv. [in Ukrainian]. P. 202. Pylhun, N. V. (2014) Problemy realizatsii ta zakhystu prav i svobod liudyny i hromadianyna v konteksti funkcionuvannia pryntsyphu verkhovenstva prava v Ukraini [Problems of realization and protection of human and civil rights and freedoms in the context of the functioning of the rule of law in Ukraine]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu – Scientific Bulletin of Uzhhorod National University*. 26. 40–43 [in Ukrainian].

of ensuring suffrage, methods administrative and legal regulation. Auxiliary elements, according to this scientist are personnel, information and logistical support of citizens' voting rights. In addition, the constituent elements of this mechanism, insists P.O. Shchorsky can be combined into three subsystems (mechanisms): the subsystem for the exercise of suffrage, the subsystem for the protection of suffrage, the subsystem for the protection of suffrage<sup>32</sup>.

Applying the concept of the structure of the administrative and legal mechanism to ensure P.O. Shchorsky on the exercise of the right of access to public information, it should be noted that the object of this mechanism will be public relations that are formed during the exercise of this right. Yes, in accordance with Art. 5 of this Law, everyone has the right to information that provides for the possibility of free receipt, use, dissemination, storage and protection of information necessary for the exercise of their rights, freedoms and legitimate interests. The exercise of this right must not violate public, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other citizens, the rights and interests of legal entities. The right to information is ensured by creating a mechanism for its implementation, opportunities for free access to statistics, archival, library and museum collections, other information banks, databases, information resources, the duty of public authorities to inform the public and the media about their activities and decisions made etc. The preamble of the Law on Access to Public Information, emphasizes Dubrov OO, stipulates that this Law determines the procedure for exercising and ensuring the right of everyone to access information held by subjects of power, other managers of public information defined by this Law, and information of public interest<sup>33</sup>. In general, these provisions describe the range of public relations to which the relevant administrative and legal mechanism applies.

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<sup>32</sup> Shorskyi, P.O. (2018) *Administrativno-pravovyi mekhanizm zabezpechennia vyborchych prav hromadian v Ukraini* [Administrative and legal mechanism for ensuring the voting rights of citizens in Ukraine]. *Candidate's thesis*. Sumy: Sumskyi derzhavnyi universytet [in Ukrainian].

<sup>33</sup> Dubrov, O.O. (2012) *Realizatsiia prava na dostup do publichnoi informatsii* [Exercise of the right to access public information]. *Visnyk - Herald*, 48. Retrieved from : <http://www.visnuk.com.ua/ua/pubs/id/4599> [in Ukrainian].

Defining the subjects of the administrative and legal mechanism to ensure the exercise of the right of access to public information, it is necessary to cite the provisions of Article 13 of the Law of Ukraine “On Access to Public Information”. In accordance with its provisions, the following entities are obliged to provide open access to information that has become known in the course of administrative activities: public authorities and local governments, authorities of the Autonomous Republic of Crimea, other entities engaged in government functions in accordance with the legislation and decisions of which are binding; legal entities whose activities are financed from the state or local budgets in terms of reporting on the use of such financial resources; Entities entrusted with the exercise of public administration functions, including the provision of educational, health, social or other public services – in relation to information related to the performance of their duties; economic entities that hold a dominant position in the market, or are endowed with special or exclusive rights, or are natural monopolies – in relation to information on the conditions of supply of goods, services and prices for them<sup>34</sup>. These regulations define the range of subjects of the administrative and legal mechanism for ensuring the right of access to public information. These entities implement their obligations to ensure access to public information through the relevant departments of the organization of access to public information; departments for ensuring access to public information and consideration of citizens’ appeals, as well as through responsible officials who provide access to public information in the prescribed manner.

Disclosing the content of the administrative and legal mechanism for ensuring the right of access to public information, it is necessary to talk first of all about the principles. Article 4 of the Law of Ukraine “On Access to Public Information” stipulates that access to public information in accordance with this Law is based on the principles of transparency and openness of the subjects of power, free receipt and dissemination of information, except for restrictions established by law, equality regardless characteristics of race, political, religious and other beliefs, sex,

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<sup>34</sup> Закон України Про доступ до публічної інформації [Law of Ukraine On Access to public information] (2011, January 13). *Vidomosti Verkhovnoi Rady Ukrainy – Information of the Verkhovna Rada of Ukraine*, 32. Art. 314 [in Ukrainian].

ethnic and social origin, property status, place of residence, language or other characteristics. Although the basic principles of free receipt and dissemination of public information provided by Article 4 of the Law of Ukraine “On Access to Public Information”, however, emphasizes Blinova GO, it contains exceptions, the main of which is the inclusion of public information in the category of information with limited access, which according to the current Ukrainian legislation is divided into three types: confidential, secret and official<sup>35</sup>. Rules for the circulation of information with limited access are established by law.

A number of forms, methods, means of ensuring the right of access to public information are aimed at the implementation of these principles, among which should be determined: 1) special requirements for record keeping on requests for public information; 2) on the websites of public authorities there are headings “Access to public information”, which usually include information on the forms of submitting a request for public information; the procedure for compiling and submitting requests for public information; information published by the administrator in accordance with the Law; information about the accounting system, types of information stored by the manager; a list of information that constitutes official information in the bodies of the State Tax Service of Ukraine; the procedure for appealing the decisions of the information manager or inaction; reports on the satisfaction of requests for information; the most requested documents; the rights of inquirers provided by the Law on Access to Public Information; regulations; message; 3) lists of information constituting the official list are placed on the websites in the relevant sections; 4) the forms for submitting a request for public information are approved; 5) standard procedures for consideration of requests for public information are adopted; 6) the mechanisms of interaction between public authorities and their subdivisions to ensure access to public information are determined; 7) regulations on procedures for receiving, processing, registering and considering requests for public information of individuals, legal entities, associations of citizens without

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<sup>35</sup> Blinova, H.O. (2019) *Informatsiine zabezpechennia orhaniv publichnoi administratsii v Ukraini: administratyvno-pravovi zasady [Information support of public administration bodies in Ukraine: administrative and legal principles]*: Zaporozhye: Helvetica [in Ukrainian]. P. 180.



legal personality, as well as providing information received or created by public authorities in the exercise of their powers or is in their possession.

## Conclusions

Thus, the signs of the administrative and legal mechanism for ensuring the exercise of the right of access to public information are that: 1) the object of its influence is public relations in the field of satisfaction of the right of access to public information, by creating opportunities for free access to statistics, archival, library and museum funds, other information banks, databases, information resources, information on the powers and activities of the subjects of power etc.; 2) the subjects of this mechanism are state authorities and local governments, authorities of the Autonomous Republic of Crimea, other entities that exercise governmental functions in accordance with the law and whose decisions are binding; legal entities whose activities are financed from the state or local budgets; entities to which the implementation of public administration functions is delegated; business entities that hold a dominant position in the market, or are endowed with special or exclusive rights, or are natural monopolies; 3) forms, methods and means of ensuring the right of access to public information include special requirements for record keeping on requests for public information; requirements for public authorities' websites regarding the placement of public information; forms of submitting a request for public information; standard procedures for consideration of requests for public information; algorithms of interaction of public authorities and their subdivisions to ensure access to public information; regulations on the procedures for receiving, processing, registering and considering requests for public information of individuals, legal entities, associations of citizens without legal personality, as well as providing information received or created by public authorities in the exercise of their powers or in their possession etc.; 4) the mechanism operates on the principles of transparency and openness of the subjects of power, free receipt and dissemination of information, except for restrictions established by law, equality regardless of race, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other features; 5) the purpose of

the mechanism is to create conditions under which each individual can freely exercise the right of access to public information.

With this in mind, we propose to understand the system of administrative law, means, forms, methods and guarantees provided by public authorities under the administrative-legal mechanism to ensure the exercise of the right to access public information, based on the principles of transparency, openness, accountability and conditions for unimpeded access to public information.

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### Summary

The article considers the organizational and legal framework for ensuring the right of access to public information in Ukraine. The positive tendencies of legal support of realization of this public right of physical persons and shortcomings of the legal practice revealed in this sphere are defined. It was found that the object of influence of the administrative and legal mechanism to ensure the exercise of the right of access to public information is public relations in the field of satisfaction of the right of access to public information, by creating opportunities for free access to statistics, archives, libraries and museums. , other information banks, databases, information resources, information on the powers and activities of the subjects of power. Forms, methods and means of ensuring the right of access to the public are described. It was found that the purpose of the administrative and legal mechanism to ensure the exercise of the right of access to public information is to create conditions under which every individual can freely exercise the right of access to public information. The author's definition of the key concept of a scientific article is offered.

**Keywords:** mechanism, public authority, information, access, provision