



Research Article

JOURNALISM AND THE RIGHT TO INFORMATION AS TOOLS FOR COMBATING CORRUPTION IN UKRAINE: ASSESSMENT OF MEDIA ACCESS TO ANTI-CORRUPTION AUTHORITIES

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ABSTRACT

Background: Since 2014, Ukraine has made significant progress in establishing its anti-corruption framework. However, the communication channels of the country's anti-corruption agencies remain limited, preventing the open and accessible dissemination of information regarding their activities. Transparency, as a critical feature of information openness, guarantees that civil society can access relevant governmental data. In this context, investigative journalism has proven to be a vital tool for exposing corruption and holding authorities accountable. This paper examines the role of journalism in combating corruption in Ukraine, emphasising its importance as a tool for ensuring government accountability and transparency. It provides an overview of Ukraine's anti-corruption policies and institutions, exploring theoretical models of media-government-society relations. Considering the 'Public Watchdogs' Right to Access Information, the article addresses the complexities surrounding the right to access information under wartime conditions and analyses whether investigative journalism can lead to the exposure of corrupt officials that prompt state anti-corruption bodies to take action.

Methods: This article applies McQuail's theory of democratic participation to examine the role of journalism in reporting corruption cases and promoting transparency. To investigate the current state of transparency in Ukraine's anti-corruption efforts, it employs content analysis of the websites of three key institutions: the National Agency on Corruption Prevention, the National Anti-Corruption Bureau, and the High Anti-Corruption Court of Ukraine, including its Appeals Chamber. The analysis highlights challenges related to the openness and accessibility of the information provided by these institutions.

Results and Conclusions: Findings indicate that while state anti-corruption agencies formally provide access to information through their websites, journalists encounter significant barriers to timely and systematic access. The research highlights the impact of martial law on information access, emphasising the state's discretion in balancing security concerns with transparency obligations. The study concludes with recommendations for improving the communication strategies of anti-corruption bodies, proposing measures to enhance transparency and public trust.

1 INTRODUCTION

Effective corruption control remains a significant challenge for many countries worldwide. The COVID-19 global pandemic highlighted how numerous governments struggled to manage emergencies transparently and accountably. In Ukraine, corruption has dominated the political agenda since the country's declaration of independence in 1991. Following the 2014 Maidan protests, which demanded stronger anti-corruption control measures, Ukraine once again directed reforms aimed at reducing corruption among state officials and improving governance.

Several key reforms are important to mention. One of the most significant reforms was decentralisation, which transferred greater power and financial resources to local authorities. By reducing the concentration of corruption at the central level, this shift made local authorities more accountable to the electorate.¹ Another crucial reform involved implementing digital technology to enhance transparency. The expansion of e-governance minimised human intervention in bureaucratic processes, reducing the risk of bribery and making public services more efficient and transparent, reducing the risk of human factors.² The establishment of anti-corruption bodies further strengthened Ukraine's efforts to combat corruption. These institutions were created to ensure a more robust supervision and control.³ At the same time, legal and judicial reforms aimed to reinforce anti-corruption measures by introducing new legislation and improving the judiciary's role in tackling corruption-related cases.⁴ The final implementation was the

1 Cabinet of Ministers of Ukraine, 'Decentralization Reform' (Government Portal, 2024) <<https://www.kmu.gov.ua/reformi/efektivne-vryaduvannya/reforma-decentralizaciyi>> accessed 16 October 2024.

2 Federico Plantera, 'The Path Towards E-Governance in Ukraine' (E-Governance Academy EGA, 17 March 2021) <https://ega.ee/success_story/path-towards-egovernance-ukraine/> accessed 16 October 2024.

3 Organisation for Economic Co-operation and Development, 'Anti-Corruption Network for Eastern Europe and Central Asia' (OECD, 2024) <<https://www.oecd.org/en/networks/anti-corruption-network-for-eastern-europe-and-central-asia.html>> accessed 16 October 2024.

4 Pavlo Petrenko, 'The Cabinet of Ministers has Approved the Principles of Reforming the Judicial System with a Complete Reboot of the Entire System' (Ministry of Justice of Ukraine, 21 October 2015) <<https://minjust.gov.ua/news/ministry/kabinet-ministriv-shvaliv-printsipi-reformuvannya-sudovoi-sistemi-z-povnim-perezavantajennjam-usiei-sistemi---pavlo-petrenko-22147>> accessed 16 October 2024.

activation of processes ensuring transparency in government decision-making and public control. The development of open data systems and the active participation of civil society organisations and citizens under the authorities' supervision are factors that enhance anti-corruption efforts.⁵

These five initiatives introduced above were designed to build a better and more effective infrastructure for corruption control, recognising that addressing corruption requires participation of not only law enforcement agencies, but society. Journalism plays an important role in this process by drawing public attention to corruption issues and ensuring oversight in developing anti-corruption institutions.

In this paper, we examine whether journalists have access to information at different levels of the state anti-corruption structure in Ukraine, with a focus on the socio-legal nature of the study. This analysis will help determine whether the state's efforts to combat corruption are transparent.

To do this, we first provide an overview of the state policy and existing methodology of fighting corruption in Ukraine, explore the theoretical and practical directions of media-government relations, and highlight the importance of transparency for anti-corruption efforts. In the empirical section, we assess the investigative journalists' effectiveness in controlling corruption in Ukraine and conduct an analysis of the major Ukrainian anti-corruption authorities' websites to evaluate their openness and the accessibility of information for journalists in light of our theoretical framework.

The findings will serve as the basis for drawing conclusions on the limitations of journalists' operational access to anti-corruption information. Ultimately, we provide recommendations for Ukrainian anti-corruption bodies on the steps needed to reach better transparency.

2 CORRUPTION IN UKRAINE

Ukraine has followed an institutional approach to fighting corruption and has developed an advanced infrastructure for corruption control. The launch of anti-corruption reform was a turning point for Ukraine in 2014. The following six mechanisms of the Ukrainian State Anti-Corruption Policy (or National Anti-Corruption Strategy) for 2014-2017 were presented to the country as a methodology of corruption control:

1. The anti-corruption body will prepare and present annual reports on the state of the fight against corruption to the Parliament and conduct a public education campaign to eradicate tolerance towards corruption, including commercial bribery.

5 Cabinet of Ministers of Ukraine, 'Transparency and Openness in Executive Bodies are Reality' (*Government Portal*, 2024) <<https://www.kmu.gov.ua/gromadskosti/dostup-do-publichnoyi-informaciyi/rezultati-anketuvannya-organiv-vikonavchoyi-vladi-ta-monitoringu-oficijnih-veb-sajtiv/prozori-ta-vidkriti-organi-vikonavchoyi-vladi-ce-realnist>> accessed 16 October 2024.

2. Rules for financing political parties and election campaigns to all councils and for the post of the President will be unified. Disclosure of all campaign donations and of political party expenses and revenues will be required; parties' financial reports will be subject to periodic and pre-election audits by certified independent auditors.
3. The statute on lobbying will introduce legitimate methods of lobbying and sanctions for violations, and it will require disclosure of whose interests are being lobbied.
4. Tests of government officials' integrity will be allowed. They will not be viewed as a provocation of bribery (and thus as grounds for criminal prosecution) where the official had a pre-existing intention to give or accept an illegal benefit.
5. Whistleblowers will be encouraged to report acts of corruption and protected from persecution, with tip-offs reworded to protect their identity. Legal entities and state bodies will be required to implement whistleblower hotlines and anti-corruption action plans.
6. Companies and/or officers convicted of corruption will be barred from public tenders and access to public finances.⁶

The above policy was an important step towards reducing corruption in Ukraine. However, achieving long-term change will require both time and the involvement of specific groups within civil society, such as Reform Platforms, in addition to broader societal efforts. One of the key drivers of this progress is the Reanimation Package of Reforms, which brings together more than 300 experts, activists, journalists, scientists, and human rights advocates from the 50 most influential Ukrainian think tanks and non-governmental organisations. Participants in the Reanimation Package of Reforms collaborate on drafting laws, lobbying for their adoption, and monitoring the implementation of reforms.⁷ The National Agency for the Prevention of Corruption (NAPC) led the development of an anti-corruption strategy for 2021-2025. In November 2020, the strategy was passed by the Verkhovna Rada, but only on 10 July 2022 did the Anti-Corruption Strategy of Ukraine become law.⁸

In response to Ukrainian plans to control corruption, in early 2022, Transparency International Ukraine proposed five specific recommendations which, if implemented, could significantly improve Ukraine's performance in the annual survey. They are as follows: first, the necessity of conducting the tender and election of professional, independent and trustworthy leaders for the anti-corruption ecosystem infrastructure (namely, the Specialized Anti-Corruption Prosecutor's Office, the Agency for Investigation and Management of Assets and the National Anti-Corruption Bureau). Second, the adoption of a national anti-corruption strategy and implementation

6 Mariana Marchuk, 'Ukraine: The State Anti-Corruption Policy for 2014–2017' (*Global Compliance News*, 11 November 2014) <<https://www.globalcompliancenews.com/2014/11/11/ukraine-the-state-anti-corruption-policy-for-2014-2017>> accessed 14 October 2024.

7 'Reanimation Package of Reforms' (*Reform Platforms*, 2015) <<https://platforma-reform.org/reanimation-bulletin-our-updates-in-english-реанімаційний-пакет-реформ>> accessed 26 October 2024.

8 'Law on Ukraine's Anti-Corruption Strategy for Period until 2025 Takes Effect' (*Interfax-Ukraine*, 10 July 2022) <<https://interfax.com.ua/news/general/845026.html>> accessed 16 October 2024.

programme. Third, a reform of constitutional justice based on the conclusions reached by the Venice Commission. Fourth, the transparent accounting of state property and an increase in privatisation. Fifth, minimising the risks of passing laws that would take procurement out of Ukraine's Law on Public Procurement.⁹

At the end of January 2023, Transparency International Ukraine claimed that none of these recommendations have been implemented fully, four have been implemented partially, and one has not been implemented at all.¹⁰ Moreover, Law 7662, signed by Volodymyr Zelenskyy on 20 December 2022, contains significant risks and contradicts the updated opinion of the Venice Commission. Consequently, experts assessed it as a failure of the Constitutional Court reform.¹¹

Research from Transparency International Ukraine reveals that in 2022, Ukraine scored 33 out of 100 points in the Corruption Perception Index (CPI),¹² ranking 105th out of 180 countries. While Ukraine saw a significant improvement with a three-point increase in 2023, it lost some ground in the fight against corruption in 2024.¹³

In both 2022 and 2023, Ukraine's state authorities became the centre of Ukrainian and international media's attention because of major corruption scandals involving the Deputy Minister of Defence,¹⁴ the Chairman of the Supreme Court,¹⁵ and other officials.

Despite the launched reforms and the established system of anti-corruption bodies, their work is also influenced by corruption schemes. The main feature of the corruption system

9 'Corruption Perceptions Index 2021' (*Transparency International Ukraine*, 25 January 2022) <<https://ti-ukraine.org/en/research/corruption-perceptions-index-2021>> accessed 16 October 2024.

10 'Corruption Perception Index 2022' (*Transparency International Ukraine*, 31 January 2023) <<https://www.transparency.org/en/cpi/2022>> accessed 16 October 2024.

11 Draft Law of Ukraine no 7662 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of the Selection Process for Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis' (2022) <<https://itd.rada.gov.ua/billInfo/Bills/Card/40213>> accessed 11 March 2025.

12 'Corruption Perceptions Index 2021' (n 9). The Corruption Perceptions Index (CPI) aggregates data from a number of different sources that provide perceptions by business people and country experts of the level of corruption in the public sector.

13 'Corruption Perception Index 2023' (*Transparency International Ukraine*, 30 January 2024) <<https://ti-ukraine.org/en/research/corruption-perceptions-index-2023>> accessed 16 October 2024; 'Corruption Perception Index 2024' (*Transparency International Ukraine*, 11 February 2025) <<https://ti-ukraine.org/en/research/corruption-perceptions-index-2024>> accessed 14 February 2025.

14 Yurii Nikolov, 'Paper Pushers from the MoD "Syphon Off Money" on Food for the Armed Forces More than During Peaceful Life' *Dzerkalo Tyzhnia* (Kyiv, 23 January 2023) <<https://zn.ua/eng/paper-pushers-from-the-mod-syphon-off-money-on-food-for-the-armed-forces-more-than-during-peaceful-life-.html>> accessed 16 October 2024.

15 Vinicious Madureira, 'Ukraine Detains Head of Supreme Court over Corruption Allegations' (*OCCRP: Organized Crime and Corruption Reporting Project*, 22 May 2023) <<https://www.occrp.org/en/daily/17654-ukraine-detains-head-of-supreme-court-over-corruption-allegations>> accessed 16 October 2024.

in Ukraine is the close connection between politics and oligarchic business.¹⁶ Since the early 2000s, oligarchs and politicians in Ukraine have become dependent on each other and have been constantly adapting their strategies to create powerful coalitions.¹⁷ This merge of politicians and oligarchs does not allow state anti-corruption bodies to be independent and do their job of preventing, controlling, and punishing public officials.

3 ANTI-CORRUPTION BODIES IN UKRAINE

After the Revolution of Dignity in 2014, provoked mainly by systemic corruption and the crisis of power, Ukraine began the development of a full-fledged anti-corruption infrastructure and the creation of new specialised anti-corruption bodies. It was a logical component of the movement towards entering the EU and NATO. Ukraine adopted a comprehensive anti-corruption package of laws and created new specialised institutions: the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the Specialized Anti-Corruption Prosecutor's Office (SAP) and others.¹⁸ The activities of these organisations are aimed at performing various tasks around corruption reduction through a variety of measures, including prevention, investigation, and punishment.

In addition to state anti-corruption bodies, legislative and executive authorities in Ukraine are also part of the anti-corruption system. Thus, anti-corruption agencies are directly involved in the development and monitoring of anti-corruption policy, investigation and consideration of corruption cases regarding officials and large amounts of funds that require specialised expertise and resources. The anti-corruption agencies can also carry out several anti-corruption measures within their power and strengthen the anti-corruption system, helping to make anti-corruption activities more ambitious and effective.¹⁹

The National Agency on Corruption Prevention is a state anti-corruption body created to form a policy in the field of anti-corruption prevention. Among the tasks of this organisation are: verification of electronic declarations and reports of political parties related to the conflict of interests; development of the Anti-Corruption strategy drafts and a State program for its implementation; coordination of anti-corruption programs with

16 Heiko Pleines, 'Oligarchs and Politics in Ukraine' (2016) 24(1) *Demokratizatsiya: The Journal of Post Soviet Democratization* 105.

17 Serhiy Kudelia, 'Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?' in Henry E Hale and Robert W Orttung (eds), *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine* (Stanford UP 2016) 61, doi:10.11126/stanford/9780804798457.003.0004.

18 OECD, *Anti-Corruption Reforms in Ukraine: 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan* (Fighting Corruption in Eastern Europe and Central Asia, OECD Publ 2017) doi:10.1787/dd48148b-en.

19 National Agency on Corruption Prevention (NACP) <<https://nazk.gov.ua/en/>> accessed 16 October 2024.

other bodies; preparation of administrative protocols on the corruption-related offences by officials; anti-corruption check of draft laws and acts of the Cabinet of Ministers of Ukraine.

The NACP performs these tasks in cooperation with the major legislative body in Ukraine, the Verkhovna Rada, which plays a crucial role in passing laws related to the Anti-Corruption Strategy, conducting thematic parliamentary hearings, and performing anti-corruption expertise on draft laws. The Cabinet of Ministers of Ukraine, the highest executive authority, is responsible for approving the State Program for the implementation of the Anti-Corruption Strategy. Additionally, the Ministry of Justice of Ukraine, which is in charge of implementing regulatory legal acts and conducting anti-corruption expertise, also collaborates in the NACP's activities. In parallel, the NACP actively participates in the state anti-corruption policy development.

Three state anti-corruption bodies are authorised to do this:

1. The National Anti-Corruption Bureau of Ukraine (NABU) is a state law enforcement agency. Its task is to investigate corruption crimes involving high-ranking officials or large amounts of public funds.²⁰
2. The Specialized Anti-Corruption Prosecutor's Office (SAP) is an independent division of the Office of the General Prosecutor. Its tasks are the procedural guidance implementation and the public prosecution support in the Supreme Anti-Corruption Court.²¹
3. The National Agency of Ukraine for the Identification, Search and Management of Assets Obtained from Corruption and Other Crimes (ARMA).²²

The activities of these organisations are carried out in cooperation with the National Police of Ukraine, the State Bureau of Investigation, the Security Service of Ukraine, and the Prosecutor's Office, which strengthen and complement the capabilities to identify and investigate corruption crimes.

Another important level of the state's anti-corruption system is its specialised judicial bodies. The High Anti-Corruption Court²³ serves as Ukraine's highest specialised court within the judicial system. It began operating a year after the adoption of the Law "On the Supreme Anti-Corruption Court". Its tasks include reviewing proceedings on corruption crimes investigated by the NABU, acting as a court of first instance and an appellate body. The Supreme Anti-Corruption Court operates in cooperation with general courts at the local and appellate levels, as well as with the Supreme Court.²⁴

20 *National Anti-Corruption Bureau of Ukraine (NABU)* <<https://nabu.gov.ua/en>> accessed 16 October 2024.

21 Tetiana Oliynyk, 'Ukraine's Specialised Anti-Corruption Prosecutor's Office Becomes Independent Body' *Ukrainska Pravda* (Kyiv, 21 March 2024) <<https://www.pravda.com.ua/eng/news/2024/03/21/7447567>> accessed 16 October 2024.

22 *Asset Recovery and Management Agency (ARMA)* <<https://arma.gov.ua/en>> accessed 16 October 2024.

23 *High Anti-Corruption Court of Ukraine (HACC)* <<https://first.vaks.gov.ua>> accessed 16 October 2024.

24 OECD (n 18).

In assessing Ukraine's anti-corruption framework, it is evident that since 2014, Ukraine has made significant progress in establishing an institutional framework for fighting corruption, including the development of an Anti-Corruption Strategy and the creation of specialised anti-corruption bodies. However, corruption remains a serious problem in Ukraine, and the country continues to rank low on Transparency International's Corruption Perceptions Index. Key structural issues include the close links between politics and oligarchic business interests, which undermine the independence and effectiveness of anti-corruption bodies. The complex structure of the anti-corruption system may hinder civil society's attempts to control state-led anti-corruption efforts. This is where the journalists are often seen as the necessary element to mediate the information exchanges.

4 MEDIA, GOVERNMENT AND SOCIETY: THE THEORIES

The relationships between the media and society are often viewed as the connection between elites, the media, and the public.²⁵ The normative theories of the press contain ideas about political systems and public administration, defining the role of the media in each type of state. Traditionally, four normative theories are distinguished: the authoritarian, the libertarian, the social responsibility theory, and the Soviet media theory.²⁶

The authoritarian theory states that the media depend on the government; the fulfilment of the media's functions is related to the government's influence on society.²⁷ According to this theory, the functioning of the media is possible only when journalists maintain a loyal or even friendly attitude toward the government, be it authoritarian or democratic states.

The libertarian theory, or the theory of the free press, claims that the press operates in a free market of ideas where journalists are independent of the government, politics, and various social institutions.²⁸ This theory describes the conditions of interaction between the government, the media, and society as the most favourable environment for journalists to exercise public control over corrupt actions by authorities.

The theory of social responsibility represents a compromise between government control and complete press freedom. Denis McQuail stated its basic principles in 1983.²⁹ Its core argument is that the media performs important functions in society, especially in relation

25 Serhii Kvit, *Mass Communications: Textbook* (Kyievo-Mohylianska Akademia 2008).

26 Marius Rohde Johannessen and Lasse Berntzen, 'The Transparent Smart City' in Manuel Pedro Rodríguez Bolívar (ed), *Smart Technologies for Smart Governments: Transparency, Efficiency and Organizational Issues* (Public Administration and Information Technology 24, Springer Cham 2018) 67, doi:10.1007/978-3-319-58577-2_5.

27 Fred S Siebert, Theodore Peterson and Wilbur Schramm, *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility, and Soviet Communist Concepts of What the Press Should Be and Do* (University of Illinois Press 1956) doi:10.5406/j.ctv1nhr0v.

28 Denis McQuail, *Mass Communication Theory an Introduction* (Sage 1983).

29 *ibid.*

to democracy. The media must commit to performing these functions, mainly in disseminating information and providing a platform for expressing different points of view.

Over time, all normative theories have been criticised for their dependence on the social and political structure of the state and their inattention to the progressive development of media technologies. In the wake of this criticism, Denis McQuail proposed two more theories: media development theory and democratic participation theory (participatory theory).

The theory of media development suggests the media should support the government until the country reaches a sufficient level of development, at which the media can operate independently.³⁰ However, it is impossible for journalists to perform the control function over the authorities in such a model of interaction between the authorities and the media.

The theory of democratic participation emphasises the needs and expectations of active consumers of information. It upholds the right to receive the necessary information, respond, and use communication tools to engage within small communities, interest groups, or subcultures. This theory rejects introducing homogeneous, centralised, expensive, overly professionalised, neutralised and state-controlled media. It presupposes diversity, locality, deinstitutionalisation, interchangeability of sender-recipient roles, horizontal communication links at all levels of society, and the free expression of interests.³¹

Projecting this theory to the context of 2024 and contemporary media landscapes, we observe profound relevance and application, especially with the advent of digital and social media technologies. Today's media ecosystem thrives on diversity, with content available from a wide range of sources, cultures, and perspectives.

Denis McQuail points out the importance of the media as a social institution for modern societies, emphasising its function as an intermediary in modern societies.³² First, the media function as a window, offering a broad view of societal experiences and enabling individuals to observe events without external interference, thus broadening their perspectives. They also function as a mirror, reflecting societal events—though sometimes with inversion or distortion—due to the limitations imposed by the perspectives and choices of those who control the media. Additionally, the media operate as a filter or guardian, selecting certain experiences for emphasis while excluding others, whether intentionally or not. This selective process shapes the public's understanding and awareness of societal events.

30 Denis McQuail, *McQuail's Mass Communication Theory* (Sage 2012).

31 György Túry, 'Leftist vs (Neo)Liberal Scripts for the (Media) Future: Enzensberger's 'Constituents of a Theory of the Media''. (2015) 18(6) *International Journal of Cultural Studies* 613, doi:10.1177/1367877914544731.

32 McQuail (n 30).

Furthermore, the media serve as a forum or platform for disseminating information and ideas, facilitating engagement and potentially allowing for public response or reaction. This role underscores the media's function in fostering dialogue and debate within society. As a distributor, the media ensures that information reaches a wide audience, democratising access to knowledge and information. Lastly, they act as an interlocutor or conversational partner, engaging in a quasi-interactive exchange of views and responding to public inquiries, thus contributing to an ongoing societal dialogue.

The theory of democratic participation states that the media acts as an intermediary, transmitting information from the state while also being perceived by society as a means of holding the government accountable.

A transparent and accountable system of governance is very important in tackling corruption. In 1988, Robert Klitgaard argued that unfavourable conditions for the development of corruption are disaggregation of power, accountability, control, a high-quality justice system and clearly defined roles and responsibilities, norms, and restrictions, as well as a democratic culture, competition, and access to information.³³ This discussion is still relevant today. In the age of information technologies, transparency of authorities is a fundamental feature of informational openness, guaranteeing information accessibility for civil society.

The multi-layered and complex definition of transparency at both theoretical and practical levels has prompted experts to identify several types of transparency. Johannessen and Berntzen identified six types of transparency in the activities of public administration entities: transparency of documentation, transparency of negotiations, processes transparency, comparative analysis transparency, decision-makers transparency, and disclosure transparency—the right to ask questions and receive information that is not contained in documents or is not the content of public negotiations.³⁴

All of these transparency types apply to government activities and should be used by external agents, such as journalists, to inform the public about government activities. However, this is possible if government institutions provide access through authorised information sources, including press information, websites, social media and platforms like the Prozorro system.³⁵ Fragmented access to information results in corruption crimes being committed and investigations being disrupted in a quiet manner.

Independent investigative journalism and civil society play an important role in exposing corruption. However, recent attempts to limit the transparency of public procurement in the defence sector could create new opportunities for corruption. Overcoming corruption

33 Robert Klitgaard, *Controlling Corruption* (University of California Press 1988).

34 Johannessen and Berntzen (n 26).

35 Prozorro <<https://prozorro.gov.ua>> accessed 16 October 2024.

in Ukraine requires long-term comprehensive efforts at various levels—institutional, legal, and social—to ensure government accountability, dismantle ties between politics and business, and actively engage citizens and the media in controlling state bodies.

Our study critically examines the right to access information from government and anti-corruption state bodies in Ukraine, the right to respond to media coverage of corruption cases, and the right to report and investigate corruption crimes, and so on.

5 MEDIA, GOVERNMENT AND SOCIETY: THE PRACTICES IN UKRAINE

In the 1990s, journalists in Ukraine often tried to investigate the undercurrents and connections between hitmen and representatives of state sectors who stood to benefit from alleged accidental murders and the non-transparent actions of the authorities. At the time, there was no transparent system of civilian supervision over the authorities, making journalistic exposés particularly shocking to the public.³⁶

Several journalists conducted high-profile investigations that exposed corruption at the highest levels of power in Ukraine. One notable figure is Georgiy Gongadze, journalist and founder of the online media outlet *Ukrainska Pravda*, which opposed then-President Leonid Kuchma (1999-2000). Gongadze actively exposed the anti-democratic nature of the referendum held on 16 April 2000, the criminal activities of Interior Minister Yuriy Kravchenko, and other cases. On 16 September 2000, Gongadze disappeared. His decapitated body was discovered on 2 November of the same year. Articles and investigations by and about Georgi Gongadze remain available on the *Ukrainska Pravda* website.³⁷

Since its founding, *Ukrainska Pravda* reporters have continuously conducted anti-corruption investigative work. Leonid Amchuk initiated journalistic investigations into the status and behaviour of President Viktor Yushchenko's son,³⁸ while Serhiy Leshchenko exposed the removal of Mezhyhirya (President Viktor Yanukovich's residence) from state ownership.³⁹

One of Ukraine's most infamous corruption scandals, *Boyko's vyshki* (Boyko's towers), has become a symbol of large-scale corruption within the government. According to the General Prosecutor's Office of Ukraine, a scheme was set up in 2010 by Viktor Yanukovich

36 Oles Nikolenko, '5 Most High-Profile Journalistic Investigations in Ukraine' (*Suspilne Novyny*, 6 June 2020) <<https://suspilne.media/38952-5-najgucnisih-zurnalistiskih-rozsliduvan-ukraini/>> accessed 16 October 2024.

37 'Articles by Gongadze and about Gongadze' *Ukrainska Pravda* (Kyiv, 25 September 2000) <<https://www.pravda.com.ua/news/2000/09/25/2981062/>> accessed 16 October 2024.

38 Leonid Amchuk, 'Andriy Ushenko is the son of God?' *Ukrainska Pravda* (Kyiv, 19 July 2005) <<https://www.pravda.com.ua/articles/2005/07/19/3011786/>> accessed 16 October 2024.

39 Serhii Leshchenko, 'Secrets of Mezhyhirya' *Ukrainska Pravda* (Kyiv, 9 November 2011) <<https://www.pravda.com.ua/articles/2011/11/9/6742106/>> accessed 16 October 2024.

to embezzle funds from the main state oil and gas provider, Naftogaz of Ukraine, under the pretence of purchasing drilling rigs. After the purchase, the funds were transferred to controlled accounts and distributed among all accomplices of an organised criminal group. Yurii Nikolov and Oleksii Shalaiskyi co-authored an article in the *Dzerkalo Tyzhnia* newspaper, which first exposed this corruption scam in 2011.⁴⁰

Combating and preventing corruption in Ukraine has become even more critical in light of increased foreign aid received both during the war and in preparation for the country's post-war reconstruction. The ambassadors of G7 countries underscored this priority, meeting at the end of January 2023 to discuss the issue.⁴¹

In addition, in June 2022, Ukraine was granted candidate status for EU membership, just four months after Russia's full-scale invasion. The requirements for EU membership include the rule of law and progress in the fight against corruption. However, despite numerous efforts in recent years, Ukraine still ranks among the lowest globally in corruption indices.

Vitalii Portnikov, a journalist from *Radio Svoboda*, highlights that for more than 10 years, all high-profile cases have been covered by the press until the trial. However, many of these cases are subsequently forgotten, lost by law enforcement or anti-corruption structures, frozen, or suspended. In some instances, accused individuals even manage to retain their positions and are elected to Parliament.⁴²

According to Klitgaard's methodology, a single "fried fish," where a high-ranking official is held truly accountable for corruption—has never occurred in the entire history of independent Ukraine. This assessment is supported by investigative journalists from Bihus.info, who analysed high-profile corruption cases in Ukraine in recent years. They note: "Over the past 10 years, there have been many high-profile corruption cases in Ukraine. These include the "diamond prosecutors", the "amber case", and the investigations into Roman Nasirov, Nikolay Chaus and Ihor Kolomoisky. These cases were significant and, at one moment, were symbols of the effectiveness of law enforcement agencies. However, five to nine years have passed since the start of the investigations in some of them, and there are still no verdicts."⁴³

40 Yurii Nikolov and Oleksii Shalaiskyi, 'Tower for Boyka' *Dzerkalo Tyzhnia* (Kyiv, 27 May 2011) <https://zn.ua/ukr/internal/vishka_dlya_boyka.html> accessed 16 October 2024.

41 'G7AmbReformUA' (Twitter, 27 January 2023) <https://twitter.com/G7AmbReformUA/status/1619068645531090944?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwtterm%5E1619068645531090944%7Ctwgr%5E86e04a1c8dbf9bec47c9c0b73068cd62ce897d10%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.eurointegration.com.ua%2Fnews%2F2023%2F01%2F28%2F7155060%2F> accessed 16 October 2024.

42 Vitalii Portnikov, 'Ukraine: War and Corruption' (*Radio Svoboda*, 7 February 2023) <<https://www.svoboda.org/a/ukraina-voyna-i-korrupsiya-efir-v-20-30-/32258924.html>> accessed 16 October 2024.

43 Svitlana Stetsenko, 'TOP Corruption Cases: What's Happening with Rosenblatt, Nasirov, Chaus, and Others?' (*Bihus.Info*, YouTube, 18 May 2024) <<https://www.youtube.com/watch?v=vWXEjGu0iHs>> accessed 16 October 2024.

In recent years, investigative journalism—especially in the anti-corruption field—has gained significant popularity and support in Ukraine. Several journalistic and legal organisations stand out for their contributions to anti-corruption efforts, assisting those looking to conduct investigative journalism and utilising gathered information to expose corrupt practices.

One notable initiative is the Anti-Corruption Centre (ANTAC) project, which actively forwards investigative journalism findings to law enforcement agencies. This demands deciphering corruption schemes and pushing for the prosecution of those responsible.

Another influential entity, Bihus.info, consists of an independent team of anti-corruption journalists and lawyers dedicated to effective change. The organisation's project, *Nashi Groshi* (Our Money) with Denis Bigus, began airing in November 2013 on the ZIK television channel as a television counterpart to the *Nashi Groshi* (Our Money) website. However, it quickly evolved into a fully investigative platform, establishing a separate editorial office. Today, Bihus.info maintains editorial independence, regardless of the broadcasting channels that air its content. Its "We Impact" section highlights the tangible outcomes of its investigations, including the dismissal of corrupt officials, the cancellation of fraudulent tenders, and the disruption of corruption schemes. Additionally, the investigative journalism program *Skhemy: koruptsiia v detaliah* (Schemes: Corruption in Detail)—a collaboration between Radio Svoboda (Radio Freedom) and the UA Pershyi (UA First) TV channel—offers a platform for widespread exposure of corruption cases. Interested individuals can contribute by submitting information through its website's "I am a reporter" section.

A wide international network of donors supports the activities of these investigative journalism organisations, including the US Government, the EU, private international foundations, donations from individuals and legal entities, the European Commission, the EU Anti-Corruption Initiative in Ukraine, the International Renaissance Foundation, the National Endowment for Democracy (NED), the European Endowment for Democracy (EED) of the Kingdom of Netherlands, the OCCRP Journalism Development Network and others. Notably, not a single state organisation in Ukraine established to counteract corruption is mentioned as supporting these journalistic projects or organisations.

In 2021, journalists from Radio Svoboda investigated a loan from a state-owned bank in Ukraine to a businessman operating in the DNR (the Russian-occupied region of Ukraine). Their video published by the journalists led to the dismissal of the bank's head and the obstruction of the loan,⁴⁴ demonstrating the direct impact of investigative journalism on anti-corruption efforts.

44 'How to Destroy a Reputation in 15 Minutes: The Case of Ukreximbank' (NV New Voice, 10 October 2021) <<https://biz.nv.ua/ukr/economics/ukreksimbank-napav-na-zhurnalistiv-facebook-ne-vporavsya-z-problemami-skandali-groshi-tizhni-50188547.html>> accessed 16 October 2024.

Media investigations often force law enforcement agencies and anti-corruption institutions to intensify their activities. For example, when journalist Yuri Nikolov published an exposé on corruption in the army during the war in the widely respected *Dzerkalo Tyzhnia* (an outlet with 17,000 Facebook subscribers and more than 58,000 subscribers on Telegram), his article triggered government action—not the other way around.⁴⁵

Time and again, journalistic investigations take the lead in exposing cases of corruption in government and are often ahead of state anti-corruption bodies in identifying and publicising corruption cases.

Since 2022, several high-profile corruption charges in Ukraine have been successfully pressed by the initiative or with the participation of journalists, demonstrating the power of media-driven accountability in the country's ongoing anti-corruption efforts. During the full-scale invasion, Ukraine's Specialized Anti-Corruption Prosecutor's Office (SAPO) launched a criminal case against the head of Dnipropetrovsk Region, Valentyn Reznichenko,⁴⁶ after reports revealed his ties to a company that the regional military administration allocated billions of hryvnias to. Law prosecution opened a criminal case after public disclosure of two private investigations conducted by *Radio Svoboda* (the Scheme project) and *Ukrayinska Pravda*. Detectives of the National Anti-corruption Bureau of Ukraine⁴⁷ were assigned to carry out the investigation. However, at the time of this research (June 2023 – March 2024), no updates on its progress could be found on either the NABU website or on the website of the Specialized Anti-Corruption Court.

In early 2023, Yurii Nikolov, an investigative journalist and founder of *Nashi Groshi* (Our Money), published an exposé in *Dzerkalo Tyzhnia* that gained widespread national coverage.⁴⁸ His findings revealed that with the outbreak of war, the Ministry of Defence had been operating with minimal oversight, leading to highly inflated costs for military supplies. The revelations triggered a strong public reaction, not only by Ukrainians but also by the international public, ultimately leading to the resignation of several high-ranking officials in the military department.⁴⁹ However, Minister of Defence Oleksiy Reznikov remained in office, and President Volodymyr Zelenskyy has not dismissed him. Meanwhile, the dismissed deputy minister, accused of corruption, has denied all charges.

45 Nikolov (n 14).

46 'Reznichenko Valentyn Mykhailovych' (*LB.ua*, 24 January 2023) <https://lb.ua/file/person/3050_reznichenko_valentin_mihaylovich.html> accessed 16 October 2024.

47 Ostap Kramar, 'SAP Starts Prosecution of Dnipropetrovsk Region's Head after Publication of Journalistic Investigations' (*Hromadske*, 3 November 2022). <<https://hromadske.ua/posts/u-sap-pochali-rozsliduvannya-shodo-golovi-dnipropetrovshini-pislya-publikaciyi-zhurnalistikh-rozsliduvan#tag=zhurnalistiki-rozsliduvannya>> accessed 16 October 2024.

48 Nikolov (n 14).

49 Iryna Balachuk, 'Deputy Minister Resigns Over Food Procurement Scandal' *Ukrainska Pravda* (Kyiv, 24 January 2023) <<https://www.pravda.com.ua/eng/news/2023/01/24/7386229/>> accessed 16 October 2024.

In February 2024, the Government of Ukraine, in response to security concerns, implemented a number of changes to defend procurement procedures.⁵⁰ The most radical of these changes was the closure of data on bidders/winners on the Prozorro government platform. Now, expected costs and purchase volumes are hidden, supposedly to prevent intelligence leaks to Russia. While the military continues to hold auctions in a special closed module of the platform, the lack of public oversight raises serious risks of collusion and corruption. The new system applies not only to military uniforms but also to fuel, food supplies for the Ministry of Defence, and multibillion-dollar drone purchases.⁵¹ As a result, external observers, journalists, and the public can no longer verify whether bidding processes are fair, competitive or transparent.

Concerning these examples, our research interest is whether Ukrainian society truly functions as an “information consumer” in line with the theory of democratic media participation. Specifically, we examine the transparency of the official platforms of the bodies of policy-making (the National Agency on Corruption Prevention), the level of detection and investigation of corruption (the National Anti-Corruption Bureau), and the level of sentencing and punishment (the Anti-Corruption Court of Ukraine and the Appeals Chamber of the High Anti-Corruption Court).

6 WEBSITE ANALYSIS METHODOLOGY

To address the research question—whether the information resources of anti-corruption bodies are accessible to journalists and contribute to the transparency of state anti-corruption organisations—we analysed the structure and content of the selected state anti-corruption bodies’ websites (as of July 2023). The coding of the selected state anti-corruption agencies was examined:

1. The National Agency on Corruption Prevention.⁵²
2. The National Anti-Corruption Bureau.⁵³
3. The High Anti-Corruption Court of Ukraine and the Appeals Chamber of the High Anti-Corruption Court.⁵⁴

50 Public Relations and Media Department, ‘Transparent, Competitive, and Security-Conscious: Government Improves Defense Procurement Processes’ (*Ministry of Economic Development*, 1 February 2024) <<https://www.me.gov.ua/News/Detail?lang=uk-UA&id=5b74d130-4555-4980-a24a-21826a92db35&title=Prozoro-Konkurentno>> accessed 16 October 2024.

51 Yurii Nikolov and Kateryna Zvierieva, ‘Top Tenders of the Week: The Government Makes Defense Procurements Partially Shadowed, Showcasing Risks on the Example of Belts from the Ex-Controller of Ukrzaliznytsia’ (*Nashi Groshi*, 5 February 2024) <<https://nashigroshi.org/2024/02/05/top-tendery-tyzhnia-uriad-vyvodyt-oboronni-zakupivli-v-chastkovu-tin-pokazuemo-ryzyky-na-prykladi-remeniv-vid-eks-smotriashcheho-ukrzaliznytsi/>> accessed 16 October 2024.

52 NACP (n 19).

53 NABU (n 20).

54 HACC (n 23).

The units of analysis for these anti-corruption bodies included the availability of a website, the regularity of updates, the availability of press office details on the website (including press secretary/PIO contacts), availability of feedback forms, the functionality of the information search function, and media relations regulations. These units of analysis were evaluated through the lens of government transparency theory⁵⁵ and social responsibility theory.⁵⁶

7 RESULTS AND DISCUSSION

Our study revealed that while all three websites contain press office information, none provide direct contact for press secretaries. Additionally, the presentation and content across the sites show significant inconsistency. For example, Website 2 offers a comprehensive structure promoting the values and principles through various headings, topical subjects, and links to portals with additional information. In contrast, Website 3 focuses more on content relevant to the direct work of anti-corruption courts.

The websites also differ in terms of user convenience and search functionality for media. Website 2 is the most functional, with press office details and social media links readily available on the homepage. On the other hand, Websites 1 and 3 bury these details under additional headings, making them harder to find and requiring more effort and time.

All three websites are regularly updated with current events and contain explanatory and awareness-raising content. Website 1 provides the greatest search capabilities, although the organisation's social media, namely Telegram feeds and Facebook pages, are more convenient for news searches. Websites 2 and 3 contain information on the media relations principles, communication regulations, and guidelines for interacting with the media, from principles to forms of requests and compliance with memo protocols. All websites provide links to their social media platforms, and Websites 1 and 2 offer English-language versions with information on the organisations' activities.

However, journalists are primarily interested in obtaining information about ongoing investigations and court proceedings on corruption cases rather than general organisational information. Our analysis revealed that the relations between journalists and bodies like the NABU are regulated by the "General Principles of External Communication between the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office."

The NABU website outlines its role in implementing these communication principles and lists the types of official information released to the media. The contents of the agreed press releases or joint statements, which are possible for public disclosure, are indicated.

55 Johannessen and Berntzen (n 26).

56 Túry (n 31).

Additionally, it identifies types of information that must not be disclosed to the media, including 1) facts of petitions being prepared and sent for approval to the Specialized Anti-Corruption Prosecutor's Office, as well as the decisions on the petitions; 2) facts of preparation and submission of draft reports on suspicion to Specialized Anti-Corruption Prosecutor's Office, as well as the review results; 3) the number and composition of the detectives and operatives group; 4) the facts and content of prosecutor's instructions to detectives; and 5) the personal details of suspects before they are notified of suspicion—except in cases when the suspect is a public figure and has openly demonstrated their probable involvement in criminal proceedings, in which case the pre-trial investigation is conducted by National Security Service of Ukraine detectives under the procedural supervision of the Specialized Anti-Corruption Prosecutor's Office prosecutors.⁵⁷

The High Anti-Corruption Court's (HACC) website outlines communications principles that emphasise openness, consistency, coordination, and timeliness. However, a technical issue prevented access to documents in the "Sample Documents" section, including the rules of conduct in the meeting room, a sample permission for shooting, and a media memo.

A general overview of ways for journalists to access the websites of anti-corruption organisations reveals that the websites' role as representatives is more evident than their functionality. The websites are more likely to be used by the media as data aggregators or archives, primarily for reporting on the results of completed work. However, this significantly differs from the type of information gathering required to cover corruption cases. Thus, the content on these websites does not fully comply with the professional ethics principles—such as truthfulness, accuracy and fact-based communications, independence, objectivity, impartiality, fairness, respect for others and public accountability—as these apply to the gathering, editing and dissemination of newsworthy information, not only to the public by journalists but also by public authorities.

During the website analysis, we found that the transparency of the analysed organisations is only partially supported by their websites. The websites have complicated navigation, and there are prescribed restrictions for journalists seeking information about the progress of corruption investigations. Additionally, the register of corrupt officials is closed to third-party access. This confirms the limited opportunities for journalists to gather information on the progress of investigations and bring corrupt officials to justice.

Under such conditions, journalists, fulfilling their social function of civil control, are forced to seek alternative ways of accessing information, resorting to investigative journalism and public activity. Investigative reports play an important role in ensuring transparency and accountability in Ukraine and other countries, as they can help improve

57 NABU and SAPO, 'Unified Principles of External Communication between the National Anti-Corruption Bureau of Ukraine and the Specialised Anti-Corruption Prosecutor's Office' (2023) <<https://nabu.gov.ua/press/yedyni-pryncypy-zovnishnoyi-komunikaciyi-mizh-nacionalnym-antikorupciynym-byuro-ukrayiny-ta/>> accessed 16 October 2024.

the situation in various spheres of public life. In Ukraine, investigative reports are an important tool for detecting corruption, human rights violations, and other matters of public significance. They can touch upon different spheres, including politics, business, environment, healthcare, and more. Several independent media organisations and publishing houses in Ukraine are active in investigative projects. Independent media organisations and reporters operating in the regions have also significantly contributed to the development of Ukrainian journalism.

According to Transparency International,⁵⁸ anti-corruption journalistic investigations are pivotal in tackling corruption by uncovering the mechanisms through which considerable sums are diverted from natural resources and state coffers. These investigations not only bring light to the identities of those directly involved in corrupt activities, including the facilitators and the existing loopholes that enable the illegal movement of funds, but they also initiate the necessary reforms in nations where corruption impedes progress. Furthermore, by advocating for justice, these journalistic efforts promote accountability, good governance, and sustainable development, ensuring that the fight against corruption leads to tangible improvements in society.

8 PUBLIC WATCHDOGS' RIGHT TO ACCESS INFORMATION HELD BY STATE AUTHORITIES IN WARTIME

The legislation of Ukraine on the right of access to socially significant information has recently undergone significant changes. This area of social and legal relations is regulated by the Laws of Ukraine “On Information” of 2 October 1992 No. 2657-XII, edition of 15 November 2024, and “On Access to Public Information” of 13 January 2011 No. 2939-VI, edition of 8 October 2023. Subsequent editions tended to increase guarantees of openness and accessibility of information in the possession of public authorities for each person. The new Law of Ukraine “On Media” dated 13 December 2022 No. 2849-IX⁵⁹ in this field of legal regulation replaced a number of laws, which became invalid with its adoption, in particular, the laws of Ukraine on print media (press) in Ukraine (1993), on television and radio broadcasting (1994), on news agencies (1995), the National Council on Television and Radio Broadcasting (1997), on the procedure for covering the activities of state authorities and local self-government bodies in Ukraine by the mass media (1997), and on the protection of public morality (2004). The new edition sets out the Law of Ukraine “On State Support of the Media, Guarantees of Professional Activity and Social Protection of Journalists” dated 23 September 1997 No. 540/97-VR, as amended on 31 March 2023; Law of Ukraine “On Prevention of Corruption” dated 14 October 2014 No. 1700-VII, revised on

58 ‘Investigative Journalism’ (*Transparency International*, 2024) <<https://www.transparency.org/en/advocacy/investigative-journalism/>> accessed 16 October 2024.

59 Law of Ukraine no 2849-IX ‘On Media’ [2023] Official Gazette of Ukraine 3/205.

1 January 2025; Law of Ukraine "On Personal Data Protection" dated 1 June 2010 No. 2297-VI, amended on 18 January 2025, Law of Ukraine "On the Legal Regime of Martial Law" dated 12 May 2015 No. 389-VIII, amended on 8 February 2025.

It is widely known that the right of access to information is not absolute. It is one of the first rights to be limited following the Law on the Legal Regime of Martial Law. In accordance with the Decree of the President of Ukraine, "On the Introduction of Martial Law in Ukraine",⁶⁰ approved by Law No. 2102-IX of 24 February 2022, in connection with the introduction of martial law in Ukraine, the constitutional rights and freedoms of a person and a citizen provided by Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine may be temporarily restricted, for the period of the legal regime of martial law.

If the function of the right of access to information is to ensure that a person receives information directly from state authorities and local self-government bodies about their activities and information about themselves (i.e. access to official information), as well as certain information held by private legal entities, the purpose of freedom of information consists in providing the possibility of free search and receipt of any information from publicly available sources, obtaining information about the actions of the authorities, but already in the interpretation of media representatives.⁶¹ The popular concept of militant democracy (not necessarily in wartime) refers to the legal restriction of democratic freedoms to isolate democratic regimes from the threat of overthrowing by lawful means.⁶²

Although democracy is not mentioned in the Constitution of Ukraine as an object of protection when applying restrictions to the implementation of fundamental rights and freedoms, and given that freedom of expression is commonly expected to be subject to limitations during wartime, historical examples demonstrate that it is possible to maintain a "cool head" on the issue of guaranteeing fundamental rights and freedoms.⁶³

Since 24 February 2022, public access to most registers, information systems—both national and local—and the Unified Open Data Portal has been restricted. The Resolution of the Cabinet of Ministers of Ukraine, dated 12 March 2022, No. 263, established that for the period of martial law, ministries, other central and local executive authorities, state and municipal enterprises, institutions, and organisations belonging to the sphere of their

60 Decree of the President of Ukraine no № 64/2022 'On the Introduction of Martial Law in Ukraine' [2022] Official Gazette of Ukraine 46/2497.

61 Oksana Nesterenko, 'Constitutional Right of Access to Information: Essence, Content and Scope' (*Human Rights in Ukraine: The Information Portal of the Kharkiv Human Rights Protection Group*, 9 April 2008) <<https://khpg.org/1207743167>> accessed 16 October 2024; Tetiana M Slinko and Oksana V Nesterenko (2024) 'Access to Public Information' in Yurii G Barabash and others (eds), *Great Ukrainian Legal Encyclopedia*, vol 4: Constitutional Law (Pravo 2024) 216.

62 Yurii Barabash and Hryhorii Berchenko, 'Freedom of Speech under Militant Democracy: The History of Struggle against Separatism and Communism in Ukraine' (2019) 9(3) *TalTech Journal of European Studies* 5, doi:10.1515/bjes-2019-0019.

63 *ibid* 7.

management, should ensure the proper functioning of information and electronic communication systems, public electronic registers, the owners (holders) and/or administrators of which they are, and protect information processed in them. These authorities were permitted to suspend and restrict the operation of electronic communication systems, as well as public electronic registers. The amended version of this Resolution, effective from 9 May 2023, clarified that such restrictions apply to territories of active hostilities and temporarily occupied territories.

By the Order of the Ministry of Justice of Ukraine dated 31 January 2023 No. 423/5, the publication of information in the form of open data, which is managed by the Ministry of Justice of Ukraine, was resumed—with the exception of information from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, the Unified State Register of Persons Subject to the provisions of the Law of Ukraine “On the Purification of Government”, and the State Register of Certified Judicial Experts. At the same time, in practice, this restriction is not comprehensive, and paradoxically, the possibility of paid access to USR data, as well as access through external services and products that use this data, is reported.⁶⁴

According to the DEJURE study on access to public information under martial law in Ukraine, administrators now decide by their bylaws whether to publish some information or withhold it from websites, registers and other resources. This is due to the absence of a legislative list specifying which information is restricted in access, which raises doubts about whether it is possible to provide such information upon request. The same issues apply to access to open data.⁶⁵ This concerns, first of all, the publication on the official websites of public authorities of information on decisions made, adopted regulatory legal acts, and the publication of the document accounting system. The openness of such information is not systemic and is rather an exception than an everyday norm.⁶⁶ The cultural and historical heritage of the secrecy of information continues to be reflected in the realities of modern life in Ukraine.⁶⁷

64 Nadiia Babynska, ‘Public Information in the Form of Open Data under Martial Law: Specifics, Paradoxes, Tips’ (*Dostup do Pravdy*, 15 May 2023) <<https://dostup.org.ua/blogs/publications/publicchna-informatsiia-u-formi-vidkrytykh-danykh-v-umovakh-voiennoho-stanu-spetsyfika-paradoksy-porady>> accessed 15 February 2025.

65 Khrystyna Burtnyk, *Access to Public Information and Challenges for the Judiciary in Wartime* (DEJURE Foundation, 9 January 2023). <https://dejure.foundation/dostup_do_publichnoyi_informaciyi_ta_vyklyky_dlya_sudovoyi_vlady_v_umovakh_vijny/> accessed 15 February 2025.

66 Iryna Berezovska, ‘Topical Issues of Citizens’ Access to Public Information and the Problems of Application of the Law of Ukraine “On Access to Public Information”’ (2016) 855 *Bulletin of Lviv Polytechnic National University, Series: Juridical Sciences* 26.

67 Liubov Palyvoda and others, *Existing Mechanisms of Cooperation Between Public Authorities and Civil Society Organizations in the Context of the Implementation of the National Strategy for Promoting Civil Society Development in Ukraine 2016-2020* (Vaite 2016).

According to the results of parliamentary control in 2023, the Verkhovna Rada Commissioner for Human Rights received 3,957 appeals (5,557 notifications) regarding violations of the right of access to public information. Among the main recorded violations of the right to information are unreasonable inclusion of information to the one with limited access, failure to provide information, restriction of access to information, non-publication of information on the official websites of the authorities, and delay in satisfying requests.⁶⁸ The results of the UNDP assessment indicate a decrease in the level of disclosure by managers of public information related to the introduction of the legal regime of martial law on their official websites compared to 2022, a decrease in ensuring its completeness, relevance and navigational accessibility. It was also noted that there is no unified approach to the structure and content of official websites, with many lacking a separate section for publishing administrative documents.⁶⁹

Ukraine is a party to the Council of Europe Tromsø Convention on Access to Official Documents (2009), which was ratified by the Parliament of Ukraine on 20 May 2020.⁷⁰ This Convention was meant to be the first binding international legal instrument to recognise a general right of access to official documents held by public authorities. Transparency of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralistic.⁷¹ This agreement echoes the ECHR, listing the aims of possible limitations on access to state-owned information (Article 3).

The ECtHR thus considers that, apart from the press, the capacity of a watchdog extends to NGOs, as well as to academic researchers and authors of literature on matters of public concern, and warrants a high level of protection under Article 10 of the Convention. It also notes that the function of bloggers and popular users of social media may also be assimilated to that of "public watchdogs" insofar as the protection afforded by Article 10 is concerned, given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information in general (*Magyar Helsinki Bizottság v. Hungary*, 2016).⁷² The Court has furthermore extended this role to an election

68 Dmytro Lubinets, 'Information Rights' in *Annual Report on the State of Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2023* (Ombudsman of Ukraine 2024) ch 9 <<https://ombudsman.gov.ua/report-2023/rozdil-9-informatsiini-prava>> accessed 15 February 2025.

69 Tetiana O Oleksiuk and Oleksii M Kabanov, *Report on Monitoring the State of Ensuring Information Rights under Martial Law in 2023* (Ombudsman of Ukraine 2023) <https://www.undp.org/uk/ukraine/publications/zvit-pro-monitorynh-stanu-zabezpechennya-informatsiynkyh-prav-v-umovakh-voyennoho-stanu-2023-roku?fbclid=IwAR1amjPjJrAhLWfVvTbr2b4dDA_AK7U9BVCnAUjXvbeoTY0p3G1SPnID1TM> accessed 15 February 2025.

70 Council of Europe Convention on Access to Official Documents (Tromsø, 18 June 2009) CETS 205; Law of Ukraine no 631-IX 'On Ratification of the Council of Europe Convention on Access to Official Documents' [2020] Official Gazette of Ukraine 48/1512.

71 'Details of Treaty no 205' (*Council of Europe Treaty Office*, 2020) <<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=205>> accessed 15 February 2025.

72 *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) <<https://hudoc.echr.coe.int/fre?i=001-167828>> accessed 15 February 2025.

observer (*Timur Sharipov v. Russia*, 2022).⁷³ On the other hand, lawyers have not been considered to come under this category (*Studio Monitori and Others v. Georgia*, 2020).⁷⁴ An NGO exercises a "public watchdog" role of similar importance to that of the press and may be characterised as a social "watchdog" warranting similar protection under the Convention as that afforded to the press (*Magyar Helsinki Bizottság v. Hungary*, 2016; *Margulev v. Russia*, 2019; *Association Burestop 55 and Others v. France*, 2021).⁷⁵ One example is the refusal to allow an NGO access to intelligence information despite a binding decision directing disclosure (*Youth Initiative for Human Rights v. Serbia*, 2013).⁷⁶

Current legislation does not provide an exhaustive list of information of public interest. In each case, information that is the subject of public interest can be recognised as socially necessary. Thus, the concept of public interest is evaluative. The right to know and its correlation with probable harm are determined in each specific case. According to the Laws of Ukraine "On Access to Public Information" and "On Information", information of public interest is socially necessary, in particular: ensuring the implementation of constitutional rights, freedoms and duties; on the state of the environment, the quality of food products and household items, accidents, catastrophes, dangerous natural phenomena and other emergency events, that have occurred or may occur and threaten the health and safety of citizens; on the state of law and order, education and culture of the population; which indicates a threat to state sovereignty, territorial integrity of Ukraine; on illegal actions of state authorities, local self-government bodies and their officials; on the disposal of budget funds, possession, use or disposal of state, municipal property, conditions for obtaining these funds or property; information specified in the declaration of property, income, expenses and financial liabilities, drawn up in the form and in the manner established by the Law of Ukraine "On Prevention of Corruption".

9 CONCLUSIONS

Formally, access to information is provided through the websites of state anti-corruption bodies in Ukraine, but operational access to this information is complicated by a number of restrictions, which means spending additional time to fill out questionnaires, gain access, search for contacts of press secretaries and obtain information through informal channels.

73 *Timur Sharipov v. Russia* App no 15758/13 (ECtHR, 13 September 2022) <<https://hudoc.echr.coe.int/fre?i=001-219096>> accessed 15 February 2025.

74 *Studio Monitori and Others v. Georgia* App nos 44920/09 and 8942/10 (ECtHR, 30 January 2020) <<https://hudoc.echr.coe.int/spa?i=001-200435>> accessed 15 February 2025.

75 *Magyar Helsinki Bizottság v. Hungary* (n 72); *Margulev v. Russia* App no 15449/09 (ECtHR, 8 October 2019) <<https://hudoc.echr.coe.int/eng?i=001-196480>> accessed 15 February 2025; *Association Burestop 55 and Others v. France* App nos 56176/18, 56189/18, 56232/18 et al (ECtHR, 1 July 2021) <<https://hudoc.echr.coe.int/eng?i=001-210768>> accessed 15 February 2025.

76 *Youth Initiative for Human Rights v. Serbia* App no 48135/06 (ECtHR, 25 June 2013) <<https://hudoc.echr.coe.int/fre?i=001-120955>> accessed 15 February 2025.

There are public resources in Ukraine with data on tenders and income declarations of public officials, which are essential for journalists to cover corruption.⁷⁷ However, processing this data requires time and special competencies in database analysis. The websites of state anti-corruption organisations in Ukraine function as presentation platforms, archives or aggregators of information that these organisations themselves are willing to share rather than providing the specific information journalists are seeking.

The development of investigative journalism in Ukraine has proven to be a powerful tool in combating corruption, providing much-needed public oversight, and helping to hold government officials accountable. This is confirmed by the number of subscribers and followers of the most popular anti-corruption journalism projects: The Anti-Corruption Action Centre has 331,000 followers on Facebook, over 19,000 followers on Instagram, and over 15,000 followers on Telegram; Bihus.info has 459,000 readers on Facebook, over 64,500 followers on Instagram, over 29,000 followers on Telegram, 1.05 million subscribers on YouTube; Radio Svoboda has 1.7 million followers on Facebook, 234,000 followers on Instagram, over 94,000 followers on Telegram, 1.63 million followers on YouTube; and Project Nashi Groshi has 30,000 followers on Facebook, 153,166 on X. The wide audience reach of anti-corruption investigations has great potential for controlling the authorities and shaping opposition moods in society.

Journalists investigating corruption in Ukraine play a crucial role in advocating for the impeachment and resignation of corrupt officials, as well as prompting formal investigations. Despite President Zelenskyy's claims of an effective anti-corruption system,⁷⁸ the reality is that this system cannot function effectively without journalists. Moreover, wartime conditions have further created new opportunities for corruption within the government, and the lack of legal solutions to major corruption cases signals the ineffective handling of corruption in public authorities. The case involving corruption within Ukraine's highest judicial body (established after the judicial reform)⁷⁹ demonstrates genuine steps towards implementing anti-corruption reform and actions to reduce corruption. Our research concludes that Ukrainian journalists have limited opportunities to promptly and systematically receive information from state anti-corruption bodies about ongoing cases and investigation outcomes. Therefore, investigative journalism is the only way for Ukrainian media to fulfil its role in civil control and hold authorities accountable.

77 'Transparency and Openness in Executive Authorities are Reality' (*Government Portal*, 2024) <<https://www.kmu.gov.ua/gromadskosti/dostup-do-publichnoyi-informaciyi/rezultati-anketuvannya-organiv-vikonavchoyi-vladi-ta-monitoringu-oficijnih-veb-sajtiv/prozori-ta-vidkriti-organi-vikonavchoyi-vladi-ce-realist>> accessed 16 October 2024.

78 Tetiana Lazovenko, 'Anti-Corruption System in Ukraine is Among Most Powerful in Europe – Zelenskyy' *Ukrainska Pravda* (Kyiv, 17 February 2023) <<https://www.pravda.com.ua/eng/news/2023/02/17/7389817>> accessed 16 October 2024.

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Optimising the communication activities of public anti-corruption authorities through the six types of transparency highlighted by Johannessen and Berntzen⁸⁰ will significantly increase their credibility and improve the effectiveness of anti-corruption activities by enabling public oversight. Ensuring transparency in anti-corruption authorities requires the following steps.

- **Transparency of documentation:** Establish and maintain a unified digital platform and registry for access to public documents related to anti-corruption procedures, available through the websites of anti-corruption organisations.
- **Transparency of negotiations:** Involve the public and media representatives in the decision-making process on key anti-corruption issues and provide information about the results of such negotiations through press conferences and media statements.
- **Transparency of processes:** Publish anti-corruption procedures and methods of work with detailed descriptions, allowing citizens to understand how decisions are made, what information is available and which is classified. This also requires establishing guidelines for working with journalists, ensuring that they have prompt access to information. Open access of journalists to the press secretary and press service has to be ensured, and the regular updating of information on the websites and social networks of the organisations is mandatory.
- **Transparency of the comparative process:** Ensure the publication of activity reports and annual reviews assessing the effectiveness of anti-corruption measures, including cases brought to court and those sentenced.
- **Transparency in clarifying information:** Establish specialised services for submitting requests for information and provide public access to FAQs through the organisations' communication resources.

These recommendations aim to increase the level of transparency and openness in the activities of public authorities, contributing to public confidence and enhancing the effectiveness of anti-corruption efforts in Ukraine.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

**ЖУРНАЛІСТИКА ТА ПРАВО НА ІНФОРМАЦІЮ
ЯК ІНСТРУМЕНТИ БОРЬБИ З КОРУПЦІЄЮ В УКРАЇНІ:
ОЦІНКА ДОСТУПУ ЗМІ ДО АНТИКОРУПЦІЙНИХ ОРГАНІВ**

Ірина Солдатенко*, Олена Чуб та Олена Купіна

АНОТАЦІЯ

Вступ: Із 2014 року Україна досягла значного прогресу у створенні своєї антикорупційної структури. Проте канали комунікації антикорупційних органів країни залишаються обмеженими, що перешкоджає відкритому та доступному поширенню інформації про їхню діяльність. Прозорість, як критична характеристика інформаційної відкритості, гарантує, що громадянське суспільство може отримати доступ до відповідних урядових даних. У цьому контексті журналістські розслідування виявилися важливим

інструментом для викриття корупції та притягнення влади до відповідальності. У статті досліджується роль журналістики у боротьбі з корупцією в Україні, підкреслюючи її функцію як важливого інструменту для забезпечення підзвітності та прозорості уряду. У цій роботі було надано огляд антикорупційної політики та інституцій України, досліджено теоретичні моделі відносин між медіа, урядом та суспільством. Розглядаючи права журналістів-розслідувачів на доступ до інформації, автори статті аналізують труднощі, пов'язані з правом на доступ до інформації в умовах воєнного часу та можливості журналістських розслідувань у викритті корумпованих посадовців, що спонукають державні антикорупційні органи до дій.

Методи: У статті застосовано теорію демократичної участі (МакКвейл) для дослідження ролі журналістики у висвітленні випадків корупції та сприянні прозорості. Щоб дослідити теперішній стан прозорості в антикорупційних зусиллях України, у роботі було проаналізовано (метод контент-аналізу) вебсайти трьох ключових інституцій: Національного агентства з питань запобігання корупції, Національного антикорупційного бюро, Вищого антикорупційного суду України та Апеляційної палати Вищого антикорупційного суду. Аналіз показує проблеми, пов'язані з відкритістю та доступністю їхньої інформації.

Результати та висновки: Результати дослідження свідчать, що хоча державні антикорупційні агенції формально забезпечують доступ до інформації через свої вебсайти, журналісти стикаються зі значними перешкодами для своєчасного та систематичного доступу. У статті підкреслюється вплив воєнного стану на доступ до інформації, увагу було зосереджено на дискреції держави щодо балансування між вимогами безпеки та зобов'язаннями щодо прозорості. Дослідження завершується рекомендаціями щодо вдосконалення комунікаційних стратегій антикорупційних органів, пропонуючи заходи для підвищення прозорості та суспільної довіри.

Ключові слова: корупція, журналістське розслідування, державні антикорупційні органи, прозорість влади, право на інформацію, надзвичайний стан, суспільний нагляд, суспільний інтерес, легітимність, обмеження, оприлюднення, ініціативна публікація.