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UA: UKRAINE ANALYTICA

DISINFORMATION

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UA: Ukraine Analytica is the first Ukrainian analytical journal in English on International Relations, Politics and Economics. The journal is aimed at experts, diplomats, academics, students interested in the international relations and Ukraine in particular.

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ACCESS TO OFFICIAL INFORMATION FOR COUNTERING DISINFORMATION: KEY FINDINGS AND STEPS FOR UKRAINIAN POLICY MAKERS

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During 2011-2021, Ukraine developed comprehensive legislation on access to official information, and implemented it according to the best international democratic standards. However, during the war, access to official information has been partly limited due to reasons of national security, despite the fact that this democratic instrument is an effective tool to counteract disinformation. It is important now for the government and policymakers to find a well-balanced approach between enhancing national security and ensuring free flow of access to official information, to make sure that accurate and trustworthy official information is not replaced with fake. This article is aimed at defining the role that access to official information can play in counteracting disinformation, and what steps all the stakeholders can take towards a better-informed society.

Disinformation has become a major challenge in the age of the Internet. The rapid spread of false or misleading information through digital media platforms has become an international concern, threatening to undermine democratic institutions and damage reputations. Information manipulations, including disinformation, are a global, complex, and ever-evolving challenge that threatens universal values, democracy, freedoms, and societies. A diverse range of actors, including individuals, researchers, civil society organisations, governments, social media platforms, and online service providers, have emerged to detect, attempt to understand, and respond to this challenge[1].

Governments discuss effective instruments to combat disinformation, especially during times of crisis and wartime.

Obviously, it is difficult to find a single tool that will allow for the combating of disinformation in all its forms, and blocking all means of its dissemination. It is widely recognised that the most sustainable solution is to increase media literacy, even though this takes a long time and requires a lot of resources. This instrument needs a high level of freedom of speech, and access to information and inclusivity, but it allows for building and supporting a society with strong resistance to disinformation and propaganda.

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1 1st EEAS Report on Foreign Information Manipulation and Interference Threats, EEAS, February 2023, https://euvsdisinfo.eu/uploads/2023/02/EEAS-ThreatReport-February2023-02.pdf

Access to official information is an important component of the solution. By providing accurate and reliable information, official sources can counteract false narratives, and provide the public with a factual basis for decision-making. Free access to official documents allows journalists to uncover and report on important information that may otherwise remain hidden and be replaced with disinformation. In the context of protecting national security in times of war, it helps to develop trust between government and citizens[2], which is not possible without ensuring the transparency of the government and the accountability of its actions.

The Right to Information and Its Limitations

Access to official documents ensures the right of individuals or organisations to request and receive information held by government or public authorities. It is generally considered a fundamental right in many countries, as it promotes transparency, accountability, and citizen participation in democratic processes. However, access to official documents is often subject to limitations, such as protection of personal data, national security, and confidentiality of certain types of information. In such cases, the government or public authorities may refuse to disclose requested information or may redact certain parts of the documents.

During the recent decade, many countries worldwide introduced legislation on access to official information (or access to official documents or access to public information), as is illustrated by the *Global RTI Rating*[3]. In addition, the *Council of Europe Convention on Access to Official Documents*[4] also known as the *Tromsø Convention*, entered into force in 2020 for 10 European countries, and which marked the recognition of the right to information at the level of an international treaty. The high demand for access to official documents as the component of transparency and accountability is illustrated by the number of inquiries processed by the European Ombudsman (approximately 29% of complaints to the European Ombudsman in 2021)[5].

> *By providing accurate and reliable information, official sources can counteract false narratives, and provide the public with a factual basis for decision-making*

In addition to international treaties, ratified by Ukraine, national regulations and ECHR case law, there are soft law setting standards in balancing access to official information and national security, namely the *Johannesburg Principles on National Security Freedom of Expressions and Access to Information*[6] and *Global Principles on National Security and the Right to Information (The Tshwane*

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2 Building Trust in Public Institutions, Main Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions. Website of the Organization for Economic Cooperation and Development, 13.07.2022, https://www.oecd-ilibrary.org/governance/building-trust-to-reinforce-democracy_b407f99c-en

3 Global RTI Rating https://www.rti-rating.org/

4 Council of Europe Convention on Access to Official Documents, 1.12.2020, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=205

5 European Ombudsman Office, *Annual Report 2021,* https://www.ombudsman.europa.eu/en/publication/en/156017

6 *Johannesburg Principles on National Security Freedom of Expressions and Access to Information,* https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf

Principles)[7]. For the purposes of this paper, we will not cover the entire contents of these documents, but will only note that the *Tshwane Principles* emphasised the importance of a reasonable balance between the right to freedom of information and national security considerations: *"striking the appropriate balance between the disclosure and withholding of information is vital to a democratic society and essential for its security, progress, development, and welfare, and the full enjoyment of human rights and fundamental freedoms"*.

> **Access to official documents is fundamental for promoting transparency, accountability, and citizens' participation in democratic processes. Limitations of certain types of information such as protection of national security may still apply**

Access to official documents is fundamental for promoting transparency, accountability, and citizens' participation in democratic processes. Limitations of certain types of information such as protection of national security may still apply. However, they should be well balanced and reasonable, to keep the democratic society well-informed, able to perceive information critically, and counteract disinformation.

The Role of the Ukrainian Government in Countering Disinformation During the War

For the period of 2011-2022, Ukraine developed comprehensive legislation on access to official information as well, and implemented this legislation according to the best international democratic standards. However, during wartime, the issue of a reasonable balance between national security and freedom of information became more critical. On the one hand, Strategic goal No. 4, as outlined by the National Security and Defence Council[8], highlighted the importance of "compliance with the rights of individuals to collect, store, use and disseminate information, freedom of expression of their views and beliefs, protection of private life, access to objective and reliable information". But on the other hand, state authorities tend to classify more information in wartime than in the period before the full-scale aggression, which is illustrated by the findings of the monitoring of ensuring information rights under martial law in 2022[9]. Recognising the importance of it, in 2023 the Ukrainian Ombudsman is developing a special report on access to official information during the war, which is going to be published soon. The Ombudsman's efforts in producing this report are particularly commendable, given the significant shortage of material and human resources of the Secretariat and the high number of calls on it in wartime. In the report, the Ombudsman will analyse the

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7   *Global Principles on National Security and the Right to Information (The Tshwane Principles),* Open Society, 12.01.2013, https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf

8   Decision of the National Security and Defense Council of Ukraine of October 15, 2021 "On the Information Security Strategy": Decree of the President of Ukraine No. 685/2021 as of 28.12.2021, https://zakon.rada.gov.ua/laws/show/685/2021?find=1&text=публіч#w1_2

9   Report on the results of monitoring of ensuring information rights under martial law in 2022, UNDP, 24.01.2023, https://www.undp.org/uk/ukraine/publications/zvit-pro-monitorynh-stanu-zabezpechennya-informatsiynykh-prav-v-umovakh-voyennoho-stanu-2022-roku

challenges that arose over the protection of citizens' rights to access information during the first year of war, and emphasise the vital need for access to official information during such a difficult time.

To ensure that access to official information is effective in countering disinformation, it is important that public authorities take a proactive approach to making official information available. The Ministry of Culture and Information Policy of Ukraine, which is responsible for issues related to countering disinformation and laying out and implementing the policy of information access, has established the Centre for Strategic Communications and Information Security as one of the mechanisms for countering disinformation. The Centre's work is focused on communication of counteraction to external threats, including information attacks from the Russian Federation.

As the research[10] of the Ukrainian Institute of Media and Communication illustrates *"the role of the government and government bodies at different levels in the country's information space has considerably changed in wartime. Whereas prior to the full-scale invasion of Russia, the government's communication policy was criticized by experts for many years, the situation changed radically for the better after February 24, 2022. The government managed to establish effective multi-channel communication with society... Communication through out-of-date websites, which was poorly handled by the press offices and information departments of various authorities before the full-scale invasion, has been replaced by fast and accessible communication through messengers and social media."*

At the same time, the challenges of wartime amplified the number of situations when government institutions tend to restrict access to official information, despite citizens' high interest in it. An important example highlighted a restriction on the publication of open data. On the first day of the full-scale aggression by the Russian Federation, the access to the state's open data portal and the majority of open public registers was limited. The limitation lasted for half a year and many of the public registers were still working in the limited regime. It blocked the work of many open-data based services, which provide society with vital official information, among which was one of the most popular – YouControl.

> **To ensure that access to official information is effective in countering disinformation, it is important that public authorities take a proactive approach to making official information available**

YouControl provides a platform for generated profiles of legal entities, organisations and companies to refer to the state register of legal entities. It helps prevent fraud and falsifications in several ways. Primarily, this is achievable through the verification of information related to companies. The state register of legal entities contains accurate and up-to-date information about registered companies, including their legal names, registration numbers, and other relevant details. By

10 "*Transformation of the field of media literacy in the conditions of a full-scale war in Ukraine*", Report, Ukrainian Institute of Media and Communication with the support of the Baltic Media Development Center (BCME), 27.07.2022, https://www.jta.com.ua/news-and-reports/uimk-pidhotuvav-analitychnyy-zvit-pro-transformatsiiu-sfery-mediahramotnosti

cross-checking the details of a company with the register, *YouControl* makes it possible to verify that the company exists and is legitimate. In addition, this tool helps to counteract disinformation, due to the identification of beneficial owners, by using the official data from state registers. When it is established that this or that media is controlled or financed by the aggressor, it stimulates a critical attitude in citizens to the information that this media disseminates. Increased transparency and accountability, along with the easy interface of *YouControl* results in preventing fraud and falsifications.

> **During the last year, Ukrainian civil society and researchers have contributed to the analysis of the influence of war on discourse that the aggressor spreads for justification of the war, as well as on freedom of information standards in the context of national security**

It should be noted that the legal regulation of open data and public registries is a part of the Ukrainian legislation on access to public information and official documents. Despite some differences in terminology, both the "Law of Ukraine on Access to Public Information"[11] and the Council of Europe Convention on Access to Official Documents, ratified by Ukraine in 2020, are equally applicable to information in digital formats and open data.

At the time of preparing this material, the discussion on the full disclosure of open data sets and public registers is continuing. As part of the efforts to address this issue, the government is developing a draft of a new edition of the Decree of the Cabinet of Ministers of Ukraine No. 835[12], which regulates the procedure for creating and publishing open data sets. Civil society activists insist on opening up as much data as possible, despite the hypothetical risks, as the vast majority of online tools aimed at combating fakes and disinformation rely on data from public registers. Additionally, they highlight the irrationality and imbalance of limiting access to open data and public registers. This is because, according to Ukraine's Law "On Access to Public Information", information that was previously lawfully disseminated to the public cannot be restricted.

Investigative Journalism and Fake-Resistance Tools

The challenges of wartime have led to a broad discussion in Ukraine about strategies for restricting access to official information. It became obvious that direct prohibition to distribute some types of information is not effective, and sometimes causes more harm than good. The Ukrainian government and policymakers struggle to find a well-balanced approach between enhancing national security and ensuring free flow of access to official information, to make sure that citizens can make informed decisions about the issues that affect them.

During the last year, Ukrainian civil society and researchers have contributed to the analysis of the influence of war

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11 Law of Ukraine "On Access to Public Information", 2011, https://zakon.rada.gov.ua/laws/show/2939-17#Text

12 Decree of the Cabinet of Ministers of Ukraine #835, 2005, https://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF#Text

on discourse that the aggressor spreads for justification of the war, as well as on freedom of information standards in the context of national security. For instance, UICPR (a Ukrainian-based NGO) conducted a series of analytical papers on discourse analysis, best international standards, and ECHR case law in access to information and freedom of expression. The analysis[13] on international standards, and the practice of the European Court of Human Rights and national regulations during wartime draws conclusions on Ukraine's compliance with its obligations to guarantee the right to information under the legal regime of martial law. Based on the decisions and approaches of the European Court of Human Rights, the overview assesses the efforts of governmental and non-governmental stakeholders in Ukraine to develop a policy aimed at strengthening democratic values at times of an armed aggression against the country.

Access to information has improved public awareness and its ability to check the information distributed by the media. Many initiatives, namely *StopFake*[14], *DisinfoChronicle*[15] and *Feykogryz*[16] use publicly available official information to debunk fake and misleading messages:

- *StopFake* is a Ukrainian non-governmental organisation that aims to expose and counteract fake news, propaganda and disinformation. It was established in March 2014 at the height of the conflict between Ukraine and Russia, which was accompanied by a large-scale information war. StopFake was created as a grassroots initiative, and has become a leading resource in Ukraine and internationally for fact-checking and debunking fake news and propaganda.

- *DisinfoChronicle* is an online platform that provides comprehensive coverage of disinformation and propaganda in Ukraine and globally. It is a project of the Detector Media NGO, to promote freedom of speech and media literacy in Ukraine. Using verified information from official sources, DisinfoChronicle publishes fact-checks of viral news stories and political claims, and provides a database of disinformation actors and their activities. By providing accurate and timely information on disinformation campaigns, the platform helps to build resilience to the growing challenge to democracy and media freedom.

- *Feykogryz* is a Ukrainian fact-checking project that focuses on debunking disinformation and fake news in Ukraine, run by the independent media outlet, Texty[17]. The project is staffed by a team of professional journalists and fact-checkers who specialise in verifying news stories, videos, images, and other forms of online content. Feykogryz uses a range of methods to verify the accuracy of the contents, including reverse image search, geolocation, and analysis of the original source of the information. Once a piece of content is found to be false or misleading, Feykogryz publishes an article debunking the claim and explaining why it is false. The project also provides its readers with tips on how to identify fake news and disinformation.

13 Right to information: international standards, practice of the European Court of Human Rights and national regulation during wartime, Overview of legal approaches. Series: Freedom of speech and national security. – Kyiv: UCIPR, 2022. http://ucipr.org.ua/ua/publikatsii/vydannia/right-to-information-international-standards-practice-of-the-european-court-of-human-rights-and-national-regulation-during-wartime

14 StopFake https://www.stopfake.org/uk/golovna/

15 DisinfoChronicle https://disinfo.detector.media/

16 Feykogryz https://fgz.texty.org/

17 *Texty* https://texty.org.ua/

The abovementioned Texty is a Ukrainian investigative journalism website that focuses on producing in-depth stories and analyses on social, economic, and political issues in Ukraine. One of the unique features of Texty is its extensive use of open data in their reporting. The website uses a variety of open data sources to provide evidence-based analysis, and to support their investigative reporting. In one of their recent publications[18], Texty used official information about Ukraine's income and expenses to analyse trends, and the state's ability to support its military. Journalists used official open data to create visualisations of the impact of revenues from various types of taxes on the overall budget balance. Such approaches in journalism adhere to the highest media standards, as they provide citizens with objective information, and counteract the spread of fake and unfounded conclusions.

> **In times of war, governments have a natural tendency to limit access to official information as much as possible. Officials often justify these steps by citing national security concerns as the default reason**

Overall, the development of investigative journalism in Ukraine has been closely linked to the improvement of legislation and practices in the sphere of access to official information. Several non-governmental media organisations have been advocating for access to public information and the development of open data, as part of a media development and disinformation counteracting, as the research illustrates[19]. The government's efforts to keep a balanced approach in classification of information and control on the side of Ukrainian Ombudsmen have made a significant contribution.

Key Steps for Policymakers

In times of war, governments have a natural tendency to limit access to official information as much as possible. Officials often justify these steps by citing national security concerns as the default reason. The events that occurred during the Russian invasion of Ukraine have posed the question of the efficiency of such an approach. We observed three main trends:

- While restricting access to official information may harm the right to know, the government's decisions and actions can be effective in ensuring national security, and the benefits of such measures may outweigh the negative impact.

- The restriction imposed by the government has no real effect from the point of view of national security (for instance: shutting down the access to official open data sets and public registers made no sense, as the enemy had already got that information) and the civil society was deprived of the sources of official information unreasonably.

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18 *Yevgenia Drozdova, "Everything is for the army, but there is not enough money for salaries. Incomes and expenses of the state in 2022 in the graphs"*, TEXTY, 21.02.2023, https://texty.org.ua/articles/108984/vse-dlya-armiyi-ale-hroshej-na-zarplaty-ne-vystachaye-dohody-i-vytraty-derzhavy-v-2022-roci-v-hrafikah/

19 Olena Churanova, "*Against Russian disinformation: Ukrainian non-governmental organizations on the frontline*", UA: Ukraine Analytica, Issue 1, 2018, https://ukraine-analytica.org/wp-content/uploads/churanova-ukr.pdf

- Limitation of official information may decrease the ability of civil society to resist disinformation, and thus damage national security. The level of trust in society and in government institutions is decreasing due to excessive secrecy surrounding information, such as the use of budget funds or connections between high-ranking officials and an aggressor state. As a result, disinformation cannot be verified and debunked.

As the experience of the recent year demonstrates, the active resistance of Ukrainian society may effectively withstand the enemy. During the war, civil society and its institutions have made their contribution to counteracting the harmful narratives and propaganda of the aggressor[20]. Thus, while restricting some civil rights during wartime, especially freedom of information, the government should apply a well-balanced and proportionate approach, as excessive restrictions in access to official information could have no effect or could even be harmful to national security in certain cases.

Therefore, the key steps for policymakers to take should include comprehensive analysis of the restrictions imposed and their outcomes for national security and civil society; as well as developing well-balanced regulations in this sphere. Draft laws and implementation measures in this area must take into account the public's need for official, and therefore true and accurate, information. The controlling body, in Ukraine – the Ombudsman – must have sufficient material and personnel resources to fulfil its function of ensuring citizens' informational rights.

Conclusions

In the recent decade, we are witnessing not only an information war against Ukraine, but also a general distortion of the information space by spreading fake news and disinformation. The propagation of harmful narratives and fake information is primarily facilitated by the aggressor, but their introduction is often a result of a lack of official information and individuals' susceptibility to deception and false beliefs. Fake news can be verified through the mechanisms of access to official information, and in combination with investigative journalism and media literacy improvement, this democratic tool could become a powerful weapon to counteract disinformation.

To ensure that access to official information is effective in countering disinformation, it is important that public authorities take a proactive approach to making information available, and that freedom of information laws are strengthened and effectively enforced. It has become possible, due to the efforts of civil society actors, advocating for openness of information of significant public interest, the government's efforts to keep a balanced approach in the classification of information, and control on the part of the Ukrainian Ombudsman.

Although the practical limitations of wartime often restrict access to official information for the sake of national security, and the enforcement of freedom of information laws is sometimes inadequate, this valuable resource should be enhanced and expanded. Despite the

20 Lily Sabol, Shielding Democracy: Civil Society Adaptations to Kremlin Disinformation about Ukraine, NED, 22.02.2023, https://www.ned.org/shielding-democracy-civil-society-adaptations-kremlin-disinformation-ukraine/

challenges of martial law, Ukraine has preserved its achievements in ensuring the right to information, which has become one of the components that have ensured the preservation of independence and democratic governance in a harsh information war.

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