



Only in English

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CAMPAIGN AGAINST ILLEGALLY CLASSIFIED INFORMATION

For nearly ten years the Ukrainian Helsinki Human Rights Union (UHHRU) and Kharkiv Human Rights Protection Group (KHPG) has been trying to draw attention to the practice of limiting access to normative legal acts by illegally classifying them with the stamps “for official use only”, “Not to be published” and “Not to be printed”.

Legal background of the campaign

Article 34 of the Constitution of Ukraine guarantees to every person the right for the freedom of consciousness and speech, for free expression of views and convictions. Everybody has the right for free collection, storage, use and distribution of information orally, in writing or in any other way at his/her choice. The Constitution envisages an exclusive list of exceptions, in which the right for free collection, storage, use and distribution of information may be restricted, namely “in the interests of national safety, territorial integrity or public order, for prevention of disorders or crimes, for protection of public health, for prevention of divulgence of confidential information or for maintenance of the authority and impartiality of justice”. Thus, every concrete case of refusal to render some information must fall under at least one of the above-mentioned exceptions. Organs of state power have no right to set any restrictions on the rendering of information, if this information cannot cause such damage, as described in the Constitution. According to Article 34, any restrictions of this kind must be set by law. Yet the law does not define information, which is being protected by the state, except data, which is regarded as state secret. That is why certain classifications generously given by the state organs to various normative acts (edicts and orders of the President, decrees, resolutions, directions, instructions and orders of the organs of executive power, etc.), such as “not for publishing”, “not for printing”, “for service use only”, are arbitrary and illegal. Only the following classifications may be regarded as legal: “especially important”, “absolutely secret” and “secret”, and only in case the documents meet the degrees of secrecy envisaged by the law “On state secret”.

Additionally, even if documents are to be classified as “not for publishing”, “not for printing”, “for service use only”, etc., the corresponding procedures of conferment and removal of these classifications, as well as the grounds for such actions, must be determined by law. Besides, the regulations on the organization of the access to these documents are necessary. Yet, we could not find such normative acts. It appeared that there were no normative acts, officially registered by the Ministry of Justice, concerning the order of work with the documents classified as “not for publishing” and “not for printing”.

As to the order of work with the documents “for service use only”, it was approved by the Cabinet of Ministers of Ukraine in Resolution No. 1813 of 27 November 1998 “On approval of the Instruction on the order of registration, storage and use of the documents, files, editions and other material carriers of information, which contain confidential information owned by the state”. Part 2 of Article 30 of the Law of Ukraine “On information” defines confidential information as “the data, which are owned, used and disposed by physical or juridical persons and are distributed at their will and in compliance with the conditions determined by them”. We want to point out that, although it is

not said directly, confidential information can be owned only by physical or non-governmental juridical persons. This follows from the provision of Article 19 of the Constitution, saying that “the organs of state power and of the local self-governments, as well as their officials, must act only on the grounds and within the limits of their authority, and in accordance with the Constitution and laws of Ukraine”, that is why they may not distribute information “by their will and in compliance with the conditions determined by them”. One should not reckon that the definition in the second part of Article 30 covers also “confidential information owned by the state”. Thus, the organs of state power have no right to restrict the access to information only on the basis of the right to own information and distribute it at one’s own will, as described in Article 30 of the Law of Ukraine “On information”. Nevertheless, the classification “for service use only” is being given, and criminal responsibility is envisaged for divulgence of information, classified like this (Article 330 of the Criminal Code of Ukraine). So, what kind of state-owned information is regarded as confidential? It is not known, since the lists of such data, which had had to be compiled by the organs of state power and local self-governments in compliance with the above-mentioned Resolution of the Cabinet of Ministers No. 1813 of 27 November 1998, were not published, even if they had been compiled.

Campaign

We have recorded the appearance of acts with these stamps, carried out an analysis of legislation and have shown that this practice is illegal. We have presented information about this practice in numerous publications, and have, in particular, provided details about the documents bearing such stamps when more information about their content emerged.

In June 2002 we held public hearings on the theme of illegal classification of information, in cooperation with the Parliamentary Committee on Issues relating to freedom of speech and freedom of information. We drew up a draft Law on amendments and supplements to the Law of Ukraine “On information”, which particularly addressed this issue. However, up till now this draft has not been dealt with by the Parliament.

The practice of illegally classifying information has proven to be firmly entrenched, and our activities have not obtained the desired result: the State apparatus has shown no desire to rid themselves of the possibility to use such stamps of classification. We hoped that after the Orange Revolution we would be able to achieve progress in this area.

However, within several days since Viktor Yushchenko’s Inauguration Speech, two Presidential Decrees had been issued with the stamp “Not to be published”. It was at that point that UHHRU and KHPG decided to run a widespread public campaign against the illegal classification of information. The campaign was joined by the All-Ukrainian civic organization “PORA” [“It’s time”], as well as other human rights organizations. It was run held under the banner “To be printed!”. The campaign was financially supported by the International Renaissance Foundation.

We launched this campaign with an open letter to the President and invited people to add their signatures to it. The letter was sent on January 31 2005. On the 15 of February, the Secretary of State, Oleksandr Zinchenko, while answering a journalist’s question on a press-conference stated that the practice of such classification is necessary to protect State secrets, thus demonstrating a total lack of understanding of the issue. By 20 February, 11 Decrees from President Viktor Yushchenko were issued with the stamp “Not to be published”. We received no response from the Secretariat of the President. Instead of a written response from the Cabinet of Ministers, we received a call from there at the beginning of March, which informed us that the question we raised in our appeal was extremely complex, and we were therefore advised to seek an answer to it from the Ministry of Justice of Ukraine.

On March 16 2005 we made yet another attempt to approach the President: a second letter with the relevant demands was sent, with the enclosed signatures of 580 individuals and 32 civic organizations, collected during the period following the first letter.

In April 2005 it became clear that we had hit the mark when we suggested that these illegal stamps were instruments for corruption. The Head of the State Property Fund, Valentin Semenyuk, stated at a press-conference (and this was broadcast on television), that Ihor Bakai had, via the State Department of Affairs, sold into private property land and buildings which were not allowed to be privatised, in particular, the Kyiv hotel “Dnipro” and ten sanatoriums with valuable mineral springs. All the necessary rulings were made under precisely such illegal stamps restricting access. As

“Ukraina moloda” [“Young Ukraine”] informed on 16 April, a Decree of President Kuchma from 3 February 2004 (and this decree bears the stamp “Not to be published”) gave the State Department of Affairs the right to expropriate property passed to them, as well as several other economic powers, which in fact belong to the competence of the Cabinet of Ministers or the State Property Fund. In this respect, there have even been rumours that VAT may have been refunded to fictitious firms via acts with such stamps, however no real evidence confirming these rumours has yet been provided. Thus, the need to disclose the content of normative legal acts with legal stamps restricting access has become even more obvious.

In our opinion, predecessors of the President Yushenko concealed behind the illegal restricting classifications their corruption activities, lobby agreements and unexampled level of welfare of the top nomenclature. This is confirmed by, for instance, President’s edicts No. 1180/2002 of 17 December 2002 “On Regulations on state administrative department” and No. 1213 of 14 December 2002 “On the additional measures for material security of workers of the Supreme council of justice”, which were classified as “not for publishing”. These edicts were made public by Yulia Tymoshenko at the end of 2002. “The national program of the development of power engineering up to 2010” is still hidden under the classification “for service use only”, as well as the agreement of 29 October 2004 between the company “Naftogaz Ukrainy” and “Gazprom” on the creation of gas consortium. The latter agreement is closed even for the members of the supervisory board of “Naftogaz Ukrainy”. There are many other examples.

Later the participants of the campaign filed dozens of requests to the President of Ukraine, Cabinet of Ministers and the Ministry of Justice demanding to stop the illegal imposing of secrecy on legal acts. The participants of the campaign were trying to receive answers to their requests through courts. Apart from that, a strong campaign on the necessity to disclose those secret documents was initiated in media.

The following is an extract from the Ministry of Justice’s Letter №34-C-11350 from 2 June 2006 to one of the Maidan activists taking part in the “Maidan” Alliance campaigns “To be printed!” and “Yanukovych –come clean!”

“We would like to inform you that in 2005 the Ministry of Justice received 45 Acts of the President of Ukraine and 26 Acts of the Cabinet of Ministers of Ukraine with stamps restricting access.

From July 2005 to December 2005 9 requests were received from citizens, which asked to provide them with information about acts with stamps restricting access, and which had been turned down in accordance with Article 7 of the Decree of the President of Ukraine from 10 June 1997 “On procedure for official publication of normative legal acts and their coming into effect”. From January 2006 to February 2006 172 requests for information were received from citizens asking for the names and dates of acts of the Cabinet of Ministers of Ukraine with stamps restricting access, with these being satisfied.”

In general, the results of the campaign “To be printed!” were the following.

1) A suspension of the issuing by the President of Ukraine and the Cabinet of Ministers of Ukraine of normative acts bearing the illegal stamps restricting access “Not to be published” and “Not to be printed”.

2) The declassifying and disclosing to the public of the names of, first, 96 acts, issued by the Cabinet of Ministers under the premiership of Viktor Yanukovych, then later (in response to the formal request for information from the Chief of the Board of the UHHRU Yevhen Zakharov) – 295 normative acts of the Government with the stamp “Not to be printed”, passed between 2001 and 2005.

3) Unfortunately, the Secretariat of the President has still not managed to disclose even the names of Acts of the President issued with illegal stamps.

For more information please use this website:

<http://www.khpg.org/index.php?r=37>

<http://eng.maidanua.org/node/82>

<http://eng.maidanua.org/node/582>