

# EMPLOYEE'S RIGHT TO INFORMATION IN ECHR JUDGMENTS: ANALYSIS OF SPECIFIC CASES WHERE THIS RIGHT WAS VIOLATED OR RECOGNIZED

## *DIREITO DO TRABALHADOR À INFORMAÇÃO NOS ACÓRDÃO DO TEDH: ANÁLISE DE CASOS ESPECÍFICOS EM QUE ESTE DIREITO FOI VIOLADO OU RECONHECIDO*

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### ABSTRACT

Observance of the employee's right to access information is important because the priority direction of state policy is the formation of a democratic country, which presupposes a strict observance of inalienable human rights and freedoms, maintenance of the rule of law and democracy. This study contributes to the development of the national legal system, protection of human rights, and preparation of Ukraine for integration into the European legal framework. It is necessary to take into account and adapt European standards to ensure fair and effective mechanisms for protecting employees' rights. Therefore, the study of the ECHR cases on the employee's information right can help Ukraine to adapt its legislation and judicial practice to European standards,

### RESUMO

*A observância do direito do funcionário de acessar informações é importante porque, após a declaração de independência da Ucrânia, a direção prioritária da política estatal é a formação de um estado democrático legal, uma das tarefas do qual é a observância estrita de direitos humanos e liberdades inalienáveis, desenvolvimento abrangente do estado de direito e democracia. O estudo deste tópico contribui para o desenvolvimento do sistema jurídico nacional, proteção dos direitos humanos e preparação da Ucrânia para integração no espaço jurídico europeu. É importante levar em consideração e adaptar os padrões europeus para garantir mecanismos justos e eficazes para proteger os direitos dos funcionários. Portanto, o estudo dos casos do Tribunal Eu-*

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which is a necessary step towards joining the European Union.

**KEYWORDS:** Access to information. ECHR judgments. Information. Right to access information. Human rights.

*ropeu de Direitos Humanos sobre o direito do funcionário à informação pode ajudar a Ucrânia a adaptar sua legislação e prática judicial aos padrões europeus, o que é um passo necessário para ingressar na União Europeia.*

**PALAVRAS-CHAVE:** Acesso à informação. Julgamentos da CEDH. Informação. Direito de acesso à informação. Direitos humanos.

## INTRODUCTION

The protection of human rights in the information sphere is one of the main priorities of a democratic country. This is stated in such international documents as the International Covenant on Civil and Political Rights<sup>1</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup>. According to these documents, guarantees of a citizen's ability to get free access to information are essential elements of the information security of every state and legal society. Without the right to information, it is impossible to fully exercise the right to participate in the governance of one's country. The right to information is enshrined in the Constitution of Ukraine<sup>3</sup> and contributes to the realization of various human rights and freedoms.

The topic of the employee's right to information is very relevant and important in the context of the ECHR judgments for several reasons. The employee's right to information contributes to ensuring transparency and openness in the labor sphere, which is important for the effective functioning of labor relations<sup>4</sup>. Transparency and access to information can help employees monitor and protect their personal and financial interests. At the same time, it is vital to guarantee the confidentiality and protection of employees' data, as the right to information is also linked to the right to privacy. The right to information also helps prevent discrimination in the workplace<sup>5</sup>. If employees do not have access to information about their working conditions, this can lead to situations of inequality and infringement of their legitimate rights and interests. Adequate protection of the right to information also protects employees from arbitrary decisions by employers or the state. Transparency and access to information helps to maintain a balance and influence informed decision-making by both employers and public authorities. The right to information contributes to social

1 International Covenant on Civil and Political Rights. (1966). 4

2 European Convention on the Protection of Human Rights and Fundamental Freedoms. 1950.

3 Constitution of Ukraine. 1996. 4

4 YAROSHENKO, MELNYCHUK, PROKOPIEV, ANISIMOVA, & KAPLINA, 2022, p. 490.

5 BORYSOVA, IVANOVA, IUREVYCH, & OVCHARENKO, 2019, p. 75.

justice and equality at work, as non-disclosure of information can lead to inequalities in pay, working conditions, and other aspects of employment<sup>6</sup>.

The study of the employee's right to information in the ECHR judgments is important for the development of legislation and judicial practice in the state of Ukraine, especially concerning future integration into the European Union. Studying the ECHR judgments will improve the quality of judicial protection of employees' rights in Ukraine, as it is possible to study the case law and standards that are already effectively applied in the ECHR and to adopt the existing positive experience<sup>7</sup>. This will also allow for the adaptation or revision of legislation in line with European standards.

We should not forget about the issues related to confidentiality and protection of personal data of employees, which is becoming especially relevant in the digital world. In addition, the study of this topic can help to increase public trust in the justice system and the government; it can help to maintain transparency and openness in the activities of government agencies and employers; it can affect the business environment, as it helps to create stable and transparent conditions for entrepreneurship. Thus, the aim of the research is to analyze the ECHR cases on the employee's right to information and to provide recommendations for improving legislation, court practice, and protection of employees' rights to information.

## **METHODOLOGICAL FRAMEWORK**

A range of tools and methods were applied to analyze court decisions, legislative acts, and sources. The textual analysis method was used to study court decisions. This helped the study to thoroughly check the decisions by identifying the key positions of the ECHR on the employee's right to information. This process involves identifying the arguments, facts, standards, and approaches used by the ECHR in a certain case. The research of court decisions involved an analysis of the applicable law, including conventions, treaties, national legislation, and court decisions. The legal analysis helped to identify the standards and precedents used to make the court's decision. The comparative method was used to compare court decisions in different cases to identify similarities and differences, as well as to provide conclusions and recommendations for further improvement of legislation and court practice in this area.

The dialectical method was used to analyze the contradictions and interrelationships in the development of the employee's right to information in the ECHR rulings. The author examines the significance of the ECHR case law on the right to information. Using the formal logical method, the author

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6 SPASIBO-FATEEVA, 2019, p. 215.

7 PETRYSHYN & HYLIKA, 2021, p. 19.

analyses the ECHR judgments and draws logical conclusions regarding the employee's right to information. This method helped to examine the structure of decisions, arguments, and reasoning of decisions, as well as to pay attention to how the ECHR interprets and protects this right in the context of specific cases. The systematic method was used to analyze the human rights system and the basic principles underpinning the work of the ECHR. It was considered how the employee's right to information fits into this system and how the ECHR complies with its obligations to protect this right under the European Convention on Human Rights.

The selection of the ECHR cases for the study was based on the following criteria and factors: cases with a relevant and important context for human rights and the employee's right to information, which reflect current challenges and issues in the field of labor; cases of significant public interest dealing with the establishment of legal standards and norms; cases of high public interest dealing with the establishment of legal standards and norms; and cases that have a considerable impact on the establishment of legal norms and standards.

## RESULTS

Article 8 of the European Convention on Human Rights establishes the principle of respect for private and family life. As the ECHR case law demonstrates, an important component of this right is the employee's right to information. It enshrines the following rights and opportunities: access to information on working conditions, material remuneration, and other information important to the employed person. The state must ensure the protection of employees' right to information, as well as the protection of their private and family rights from unlawful interference. In case of violation of these rights refusal to provide proper information or other unlawful actions that violate the right to information, a person may apply to the ECHR for protection of legal rights and file a complaint<sup>8</sup>.

In cases involving the protection of employees' right to information, the ECHR determines the following factors: what information was available and what it meant to the employee; what were the justifications and whether the limitations of the right to information were proportionate; whether measures were taken to protect the person's rights to privacy and confidentiality; and whether there was another way for the individual to obtain the necessary information. It should be noted that in each case, the ECHR considers all the circumstances and conditions of the case establishes whether the employee's right has been violated, and then makes a decision<sup>9</sup>.

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8 KRASNOVA, 2020.

9 ROME, 2019, p. 44.

The first case on access to information was *Leander v Sweden*<sup>10</sup>. It concerned Mr Leander's ability to obtain information about himself that was stored in the archives of the intelligence services. Mr Torsten Leander took on temporary duties as a technician in a museum. However, his duties were terminated due to the need for an investigation. The results were negative, so Mr Leander was informed that he could not continue working (Stanko, 2020). To find out the reasons for the refusal, Mr Leander turned to the fleet commander. The latter explained that some of the museum's objects are located on the territory for which he is responsible, so to become a museum employee, he must pass the appropriate check. No specific reasons for the refusal were given. Mr Leander appealed to the government to reverse the commander's decision and permit him to work in the museum without restrictions. In several of his complaints, he also asked for an explanation of the reason for the refusal<sup>11</sup>.

Thus, it was a question of the person's ability to obtain information about himself held by state authorities. However, the information was refused. However, according to Swedish law, a person applying for a position with a first-degree classification of "secret" had the opportunity to speak out if there was no special reason for this. The right of every individual to obtain official documents is established by the Swedish Press Freedom Act. However, the law makes an exception - areas where access is restricted. According to the Act on Restriction of the Right of Access to Official Documents, extracts from or information about the contents of police registers are issued, inter alia, for employment purposes at the request of a person who needs them for relevant matters. The government may also issue a special order authorizing the disclosure of information on matters of national security. In addition, if a person believes that his or her rights depend on information from the register and prove it, the state may grant him or her permission to obtain such information.

The ECHR held that the infringement upon Mr Leander's private life was "prescribed by law", as defined by Article 8. As regards the right to obtain information, the Court noted that its primary concern was the prohibition of government action that would impede an individual's ability to receive information from others who are willing or able to communicate it. In other words, it can be concluded that the Court sees the main concern here as the impossibility of discrimination. However, Article 10 does not grant a private person the right to gain access to a register that includes information about his or her circumstances. At the same time, the state is not obliged to communicate this information to a private person. Consequently, the Court finds no infringement upon Mr. Leander's freedom to obtain the information guaranteed by Article

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10 LEANDER vs SWEDEN. 1987.

11 GETMAN, YAROSHENKO, SEREDA, MALIUHA, & ZHYGALKIN, 2023, p. 65.

10 of the Convention. This decision of the Court allows to see the gradual development of the right to information. In the first case concerning access to information, the Court emphasized equal access but noted that the state is not obliged to inform an individual about his or her situation<sup>12</sup>.

Another important precedent for the protection of employees' rights to information was *Barbulescu v. Romania*<sup>13</sup>, which is a very important decision of the ECHR on the right to privacy and control over the personal information of a worker in the context of an employment relationship. In this case, the applicant was employed at an enterprise where he used a work email account for work-related correspondence. The case file shows that the employer had warned the applicant not to use his work email for personal correspondence<sup>14</sup>. The employer checked the applicant's work email account and found personal emails and messages. Subsequently, the employer used this information against the applicant as grounds for dismissal. In his complaint to the ECHR, the applicant argued that this inspection of his email was a breach of his right to confidentiality and privacy of correspondence. This right is enshrined in Article 8 of the European Convention on Human Rights<sup>15</sup>.

In its judgment, the ECHR recognized a breach of the applicant's right to privacy and, in turn, Article 8 of the Convention was violated. It was related to the lack of warning and consent of the employee to check his email account, as well as the lack of proper measures to ensure the confidentiality of his correspondence<sup>16</sup>. The ECHR also recognized that an employee has the right to protection of personal correspondence and confidentiality even in an employment relationship, and the lack of justification and consent to check his email, in this case, led to a violation of these rights.

This case demonstrated the need and importance of protecting the confidentiality and control of employees' data in labor relations. It was emphasized that employees have the right to confidentiality and inviolability of correspondence provided for in the European Convention on Human Rights. They are entitled to this right even if they use corporate resources, such as work email accounts, in the workplace and the course of their professional duties. The ECHR also drew attention to the need for the employer to obtain proper consent from the employee, and the employer, in turn, must justify verifying the personal data of employees<sup>17</sup>.

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12 DENYSOVA, BLAGA, MAKOVII, & KALIUZHNA, 2023, 114-133.

13 BARBULESCU vs ROMANIA. 2017.

14 ORLANDIĆ, 2020, p. 85-99.

15 TOPLAK & BREZOVNIK, 2019, p. 12-21.

16 POHREBNIAK, 2020, p. 47-52.

17 ANTOŠ, 2019, p. 50.

The case of *Gaskin v. the United Kingdom*<sup>18</sup> is another precedent on the right to gain information and right to respect for private and family life. The claimant argued that his right to information had been violated because data on pension rights and pension payments were part of his private life. He claimed that he should have access to this information according to Article 8 of the Convention. Having considered this case, the ECHR noted that jointly with the predominantly negative obligations, there may also exist certain positive obligations which are characteristic of a respect for private life, delineated in Article 8 of the Convention. In order to ascertain if these positive obligations exist, it is necessary to achieve a balance between the interests of the public at large and those specifically of the individual in question. Their aims as set out in Article 8(2) are of some importance. In *Gaskin's* case, there was a file containing information about the applicant's childhood history, which he was unable to fully examine. When assessing the case circumstances, the ECHR determined that the country had violated its positive obligation as outlined in Article 8 of the Convention.

According to the European Court of Human Rights, a positive obligation arises in such circumstances to ensure an "effective and accessible procedure" that will allow the applicant to gain access to "all relevant information". Therefore, the ECHR concludes that the state failed to fulfill the positive obligation to guarantee an accessible procedure that would enable the applicant to obtain all necessary information (paragraphs 158, 163, 167). This positive obligation was also identified when the applicants requested access to their medical records and were refused by the information controller<sup>19</sup>.

The ECHR upheld the claimant's complaint in this case and stressed that according to Article 8 of the Convention the right to information is an important part of private and family life which should be protected. Information and data on pension rights and benefits, an individual must know and possess this information to secure his or her financial future based on the completeness of all information<sup>20</sup>. In this case, the right to information takes precedence over the individual's awareness of his or her financial situation. And this, according to the ECHR, plays an important role in protecting privacy and interests<sup>21</sup>.

Next, it is necessary to consider *Süss v. Germany*<sup>22</sup>, which is an important precedent in the field of employees' rights to information on working conditions and remuneration and reflects important human rights norms in the context of labor relations. The applicant, i.e., an employee of a German company, applied

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18 GASKIN v UNITED KINGDOM. 1989.

19 D'APONTE, 2021, p. 200.

20 YAROSHENKO, STESHENKO, ANISIMOVA, YAKOVLEVA, NABRUSKO, 2022, p. 507.

21 SANDEEN & MYLLY, 2019. p. 1.

22 SÜSS v. GERMANY. 2008.

with the ECHR stating that his employer refused to provide information on working conditions and financial compensation. The applicant expressed his intention to get acquainted with specific data and information on the calculation, which would allow him to compare his working conditions and remuneration with another employee who performed similar work but received higher financial compensation. Therefore, the employer refused to provide this information, claiming that it was confidential. In this case, the ECHR ruled in favor of the applicant. The ECHR expressed the position that employees have the right to access information on working conditions and remuneration. The judgment recognized that transparency and openness is a fundamental factor in the protection of employees' rights. Lack of access to this data may limit an employee's ability to exercise their rights, compare working conditions with other employees, and ensure fairness and protection of their rights in the workplace<sup>23</sup>.

The ruling of the ECHR in the case of *Süss v. Germany*, the Court concluded that employers are required to provide employees with access to information about their working conditions and financial compensation. After all, compliance with these postulates will help maintain legality and fairness in labor relations. This ECHR judgment helps to protect the rights of employees to information that allows them to monitor their working conditions and remuneration and compare them with other employees. That is why employers must provide all the necessary information to employees so that they can objectively analyze their financial situation and opportunities in this area. The decision also emphasizes the need for the state and employers to comply with human rights norms and standards on labor and employment. In general, the case of *Süss v. Germany* reflects the principles of human rights in labor relations and emphasizes the importance of transparency and the protection of employees' right to information.

Furthermore, it is important to consider the case of *Guisset v. France*<sup>24</sup>, which concerns a complaint by an employee against a French employer who refused to provide her with information on the rules for using the retirement age benefits granted to women under current French law. It is known that some countries, including France, have special pension benefits or rules for women at retirement age or pension payments to compensate for the discrepancies in pay between male and female workers, as well as to ensure social protection for women, enshrined in law and regulated by the state.

During her work, the complainant wanted to know what advantages she had in the system of pension rights for women. She inquired about the

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23 MAČIULAITIS, 2023, p. 190.

24 GUISSET v. FRANCE. 2013.



employment rules regarding the retirement age and the possibility of choosing reduced working hours after reaching a certain age. She asked her employer to provide information about these things. The employer, in turn, refused to provide the complainant with the necessary information and rejected her request. He explained that this was private information and it was not his responsibility to explain such things<sup>25</sup>.

In its judgment, the ECHR argued that the employer in this case was obliged to provide the complainant with information about her rights to retirement age and benefits that he was entitled to under the law. In this judgment, the ECHR also noted the need for access to information on social and pension rights to ensure equality and to help employees exercise their rights to the full extent provided by law<sup>26</sup>.

The ECHR judgment in *Guisset v. France* has important implications for the protection of employees' rights to information on their social and pension rights. The case emphasizes the importance of employees' right to access information about their social and pension rights. Employers must provide this information so that employees can fully understand and exercise their pension rights and options. This contributes to raising awareness among employees and ensures that they can fully exercise their rights. French law provides for special pension benefits for women to compensate for discrepancies in pay between male and female workers. Therefore, the ECHR judgment in this case also contributes to gender equality in the field of pensions. It confirms the right of women to be informed about these benefits and to be able to enjoy them<sup>27</sup>.

The ECHR judgment in this case also promotes transparency, openness, and fairness in working relationships. Employers are obliged to provide their employees with information about their social and pension rights to ensure equality and the ability to enjoy these rights without discrimination and violation of rights. In this case, the Court emphasizes the importance of protecting the rights of female employees in the context of social, occupational, and pension protection. The ECHR judgment ensures that women can enjoy pension benefits designed to compensate for their lower salaries compared to men. Overall, *Guisset v. France* reflects important human rights principles, namely, the right to information and gender equality, and highlights the importance of these principles in the field of labor and social protection<sup>28</sup>.

Thus, it is possible to conclude that in assessing the violation of the employee's right to information and in determining the key aspects of legal protection the ECHR is guided by the basic principles, namely: the principle

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25 SHEVCHUK, DROZDOV, KOZAK, VYLTSAN, & Verhoglyad-Gerasymenko, 2023, p. 160.

26 VANÍČKOVÁ & BÍLEK, 2021, p. 546.

27 NEPYIPA, p. 23-29, 2020.

28 MANIA, 2019, p. 63-77.

of the rule of law; openness, equality and competitiveness; proportionality and legitimacy; respect for private and family life; confidentiality and inviolability of correspondence. Evaluation criteria are an analysis of the legitimacy of restricting the right to information; necessity and proportionality of intervention, and the provision of procedural guarantees.

The analysis of the ECHR case law shows that in assessing the violation of the employee's right to information, the Court is guided by the principles of proportionality, the rule of law, the legitimacy of the purpose of intervention, and procedural guarantees. In this regard, it is important to ensure a balance between the rights of the employee and the interests of the employer or the state. This emphasizes the importance of studying each case in detail, taking into account specific circumstances and context.

## DISCUSSION

The cases we have reviewed establish the right of employees to information about working conditions, procedures, and decisions affecting them, as well as the right to defend their rights and interests in labor relations and provide appropriate tools for this. These cases of the ECHR set important legal precedents that uphold employees' legitimate rights, and define the basic principles and standards for protecting employees' rights to information and confidentiality in employment relations.

Employees' confidentiality must be protected, even in the employment context. Employers should respect restrictions on the use of employees' data and respect their legal right to confidentiality. There should be adequate and transparent justification for the grounds for collecting information about employees. The verification and collection of personal data must be reasonable, and lawful and cannot violate employees' rights to privacy, confidentiality, and information. It should be noted that this creates a balanced approach between the interests of the employer and the rights of employees. The case law of the ECHR confirms that the right to obtain information is not absolute. The state may impose restrictions required by national security<sup>29</sup>.

The ECHR developed a firm position that public authorities, which are subjects of disposal of information of public interest, must guarantee access to any person whose interests are affected by public information. access to it. It is not only about providing a timely, complete, and qualified response to the subject's request, but also about fulfilling a positive obligation to inform citizens about information important to their rights. The effective exercise of rights under the European Convention on Human Rights can often be achieved through measures adopted by the government. According to the ECHR, the same actions of information holders are often even mandatory. in the area of

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29 AVRAMENKO, 2019.

relations between private individuals, when the right is protected, in particular, by Article 8. Failure to comply with these requirements means a breach of the provisions of the Freedom of Information Convention.

The main principle applied by the ECHR in regulating issues arising from the organization of public access to information is the recognition that the Convention guarantees the right of the public information to be “duly informed”. The ECHR notes that the public has the right to obtain information and ideas of public interest. It is especially important to prevent state interference in the dissemination of information not only by public media but also by individuals. The most pressing problems that require urgent and serious attention to reach the level of core democracies in the area of access to information are the concealment of information by the authorities, the provision of incomplete information or refusal to provide copies of requested documents, and the violation of deadlines for responding to requests. Finally, an important disciplinary factor should be the introduction of real accountability of officials for their violations in the exercise of applicants’ rights to information.

Borrowing positive experience for Ukraine in the ECHR cases under consideration should include the development of several legislative norms ensuring the right of employees to information and confidentiality of their data, as well as the obligation of employers and the State to provide access to information by the law and circumstances.

In the scientific literature, the protection of the right to information is addressed by such scholars as Politansky<sup>30</sup>, who studied the genesis of the concept and essence of the right to information as a fundamental human right, as well as the main directions of its implementation. Kodinets<sup>31</sup> aimed at developing the theoretical foundations of civil law regulation of binding information relations, defining their features and system, formulating proposals and recommendations for improving legislation on information and intellectual property relations. Posikaliuk<sup>32</sup> examined the balance between the right to information and intellectual property rights in the case law of the ECHR. Guivan<sup>33</sup> aimed to study the topical issue of legal support for an individual’s access to information as an opportunity to exercise the constitutional right to freedom of information. Teptyuk<sup>34</sup> paid attention to defining the essence the constitutional right to public information, clarifying the problematic aspects in the procedure for its introduction, and determining the judicial protection of human right.

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30 POLITANSKY, 2017.

31 KODINETS, 2016.

32 POSYKALYUK, 2017.

33 GUIVAN, 2019, p. 46.

34 TEPTYUK, 2018.

It is worth noting that for a long time the right to information has been considered exclusively within constitutional law. However, within labor law it has not yet become the subject of a separate study. In this regard, one of the pressing issues of the modern science of labor law is to study the right of employees to information in the context of the ECHR case law.

This study may have some drawbacks and limitations. In particular, this concerns the number of cases studied, which, in turn, could be subjective, since the interpretation of texts and judgments has always been based on the author's subjective opinion, based on his experience and knowledge, as well as the literature studied in the course of the research. The quality of the study, in turn, could also be affected by the availability and quality of the information sources used for research and analysis. To improve the study and address these limitations and shortcomings, a more thorough and objective approach to the selection of cases for analysis could be applied, the number of sources of information studied could be increased, and updates could be made over time to reflect changes in case law and legislation.

## CONCLUSION

The human right to access information is an important element of freedom of speech and expression. This freedom will be ineffective if people cannot obtain information. It is the basis of a democratic way of life. The peculiarity of exercising the right to information is that information freedom is an activator of other rights. Access to information is often necessary for people seeking to exercise other rights. The right to information plays a supporting role, i.e., without it, neither society nor an individual will be able to exercise their other rights. Without the realization of the right to information, it is impossible to fully exercise the right to participate in the governance of one's country.

In this regard, it is important to develop a clear and specific legal provision on what information can be requested by the employer, how and when it should be provided, and what restrictions may exist. The legal provisions should be in line with international standards and decisions of international organizations such as the ECHR to ensure that international human rights are respected. There should be effective mechanisms in place to allow employees to seek information and file complaints if their legitimate rights and interests are violated (e.g., hotlines, ombudsman, or other forms of recourse). At the national level, it is essential to guarantee adequate access to the courts and prompt resolution of cases in this area. Civil society organizations, journalists, and civic activists oversee and protect workers' rights to information at the national level. Therefore, the legislator should facilitate their activities and access to information.

This study is important and relevant for modern society, so there are several areas for further research, such as research on the impact of new technologies, such as artificial intelligence, mass data collection and analysis, on workers' rights to information; what is the role of NGOs and the media in advocating for and providing support to workers' rights to information; research on the influence of international human rights on national legislation on workers' rights to information; how social, economic, and cultural rights at work can be promoted. This will certainly help to improve the protection and understanding of workers' rights to information in different countries and contexts.

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