

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RADCHENKO v. UKRAINE

(Application no. 21217/17)

JUDGMENT

STRASBOURG

11 September 2025

This judgment is final but it may be subject to editorial revision.



In the case of Radchenko v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 21217/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 March 2017 by a Ukrainian national, Mr Oleksiy Volodymyrovych Radchenko ("the applicant"), who was born in 1977 and lives in Sofiyivska Borshchagivka, Kyiv Region, and was represented by Mr S.A. Zayets, a lawyer practising in Irpin;

the decision to give notice of the complaints under Articles 10 and 13 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 28 May 2025 and 3 July 2025,

Delivers the following judgment, which was adopted on the last date:

SUBJECT MATTER OF THE CASE

1. The case concerns the prolonged non-enforcement of a domestic court judgment ordering the provision of public information to the applicant. The applicant relied on Articles 10 and 13 of the Convention in that respect.

2. On 17 June 2015 the applicant submitted a request for information to the Ministry of Ecology and Natural Resources of Ukraine ("the Ministry"). He stated that his request was prompted by the fact that, at around the same time, several events that might have potentially had a negative effect on ecology and the environment had occurred in the Kyiv Region, namely massive fires at a petroleum storage depot and a plastic goods warehouse (8 and 12 June 2015 respectively) and the burning of peat (as of 9 June 2015). The applicant requested to be provided with the following information: (i) the level of air pollution in the relevant districts of the Kyiv Region in the form of a table organised by district and by the dangerous gases present; (ii) the measures which were being undertaken to combat that pollution and improve air quality; (iii) which measures on combating technogenic catastrophes were being undertaken by the Ministry itself as a central State authority responsible for environmental protection; and (iv) the names and addresses of the legal entities which owned the petroleum storage depot and plastic goods warehouse, the level of their responsibility with respect to the incidents and how they were compensating for the damage caused. The applicant relied on

the Law on Access to Public Information and the Law on the Protection of Environment.

3. The applicant's request was examined by the State Ecologic Inspectorate ("the Inspectorate") at the instruction of the Ministry. A reply was sent to the applicant by the Ministry on 25 June 2016. No copy of that reply was provided by the parties to the Court. From the court judgments adopted later, it appears that the applicant had been informed that there existed a general legislative ban on conducting inspections of the activities of legal entities and that the Inspectorate had submitted a special request to the Ministry to be allowed to conduct an exceptional inspection of the P. company (apparently the owner of the petroleum storage depot). The reply also mentioned that soil and water tests had been conducted in several districts of the Kyiv Region and that the local ecologic inspectorates of the Kyiv Region had been ordered to conduct crisis monitoring in the areas affected by the fires.

4. The applicant, considering that that reply did not contain the information he had requested, applied to the court, seeking to oblige the Ministry to provide him with full information.

5. By a judgment of 17 September 2015, the Kyiv Circuit Administrative Court granted the applicant's claim. It established that the Ministry's reply contained none of the information requested by the applicant and that the other information provided was unrelated to the questions raised in his request. No explanation was provided by the Ministry as to why the requested information could not be provided. The court further reasoned that the Ministry was a central State authority with a wide range of powers and obligations in the field of protection of the environment, including prevention, monitoring and information activities. In that respect it referred to the Charter of the Ministry of Ecology of 13 April 2004 which provided, in section 4, that the Ministry was responsible for (i) regulating normative levels of polluting substances in the air; (ii) establishing ecological indicators for the assessment of the state of the environment; (iii) participating, within its competence, in actions aimed at preventing and combating technogenic and natural emergencies; and (iv) ensuring that the public was informed of the development and implementation of State policies in the field of protection of the environment. It also referred to the Order on the organisation and conduct of air pollution monitoring, adopted by Resolution of the Cabinet of Ministers of Ukraine no. 343 of 9 March 1993, in accordance with which the Ministry was listed as one of the actors in the monitoring of air pollution.

6. The court also established that the information requested by the applicant was considered "public" in accordance with the Law on Access to Public Information and that the information relating to the protection of the environment and potential dangers had to be communicated to the public within forty-eight hours. The court thus ordered that the applicant be provided with a full reply within the mentioned time-limit.

7. On 26 October 2015 the Ministry sent the applicant a letter in reply to his information request. No copy of that reply was provided by the parties to the Court, but from the subsequent court judgments it appears that the Ministry informed the applicant about the existing system of bodies responsible for the monitoring of air quality and their activities and provided links to publicly available data on the website of the Kyiv Regional Sanitary and Epidemic Service relating to the information that the applicant had requested. Lastly, the Ministry attached to its reply the Comprehensive Plan for 2015-16 to combat the consequences of a fire at the petroleum storage depot which had occurred on 8 June 2015.

8. The applicant considered that reply incomplete and applied again to the court, seeking to have the Ministry's omission in the execution of the judgment acknowledged. He also requested that the court orders the special procedure of judicial control over enforcement of a court judgment.

9. By a judgment of 25 November 2015, the Kyiv Circuit Administrative Court granted the part of the applicant's claim relating to acknowledgment of the omissions on the part of the Ministry. It examined in detail the information provided by the Ministry, including the links to data available online, and found that that still did not constitute a full reply to the applicant's request. It also established, more generally, that the measurements of air quality were scattered and irregular and that ecological information was not gathered in a systematic way or made public in a due manner, which led to "systemic violation of the citizens' right to information about the environment". Those problems stemmed, at least partially, from inconsistencies in the legislation. The court further noted in that connection that the relevant problems had also been highlighted by the National Security and Defence Council in its decision of October 2013.

10. The court also stated that it was clear that because of those deficiencies the Ministry did not have the information requested by the applicant. It noted that those deficiencies were of general and systemic nature and stated:

> "... [they] could not be resolved by way of adoption of a court judgment requiring the execution of an individual obligation awarded to an applicant in a concrete case or by ordering judicial control over enforcement of a court judgment".

11. In that connection, having established the above-mentioned systemic problems, the court decided to adopt a separate ruling in the case. The separate ruling, dated 25 November 2015, was addressed to the Ministry of Ecology, the Cabinet of Ministers, the National Security and Defence Council and the Parliamentary Committee on ecological policy, environmental management and elimination of the consequences of the Chernobyl disaster. The court described the deficiencies established during the examination of the applicant's case and requested the above-mentioned authorities to take certain measures to resolve the problems it had found.

12. The applicant later initiated enforcement proceedings in respect of the judgment of 17 September 2015 adopted in his favour. Within the framework of those enforcement proceedings the Ministry sent him several more replies (no copies of those replies have been provided to the Court). As it appears from subsequent court judgments, a letter by the Ministry of 21 September 2018 (which became a basis for the termination of the enforcement proceedings) stated that on 9 June 2015 a governmental Commission for the elimination of consequences of the incidents which had occurred in the Kyiv Region had been created. The Commission had conducted various tests, including "laboratory monitoring of air pollution, the information about which had been disseminated on a daily basis to the public via the media". Furthermore, the Ministry informed the applicant of measures that had been undertaken to combat pollution and improve air quality in the Kyiv Region and stated that air pollution in excess of the limits had not been established. The letter concluded by stating that the Ministry had not been in possession of part of the requested information, namely that regarding the level of air pollution.

13. The enforcement proceedings were terminated and reopened on numerous occasions on the basis of, among other things, court decisions following the applicant's complaints to the courts. The courts, having examined the Ministry's replies and the bailiff's actions, essentially concluded that even though the Ministry had cited the unavailability of certain information which the applicant had requested, it could not be exempted from enforcing in full the court judgment, which had been clear in terms of the specific pieces of information to be provided and contained no exceptions. In October 2019 the enforcement proceedings were definitively terminated due to impossibility of enforcing the judgment "without the debtor's participation". The bailiff lodged a complaint with the police concerning a possible crime of wilful non-enforcement of a court judgment. No criminal proceedings were, however, instituted for lack of elements of an offence. The applicant challenged the relevant decision before a court, but to no avail.

14. In October 2016 the applicant also complained to the Ukrainian Parliament Commissioner for Human Rights. In reply, the Commissioner informed the applicant that, following an enquiry to the Ministry, it had been established that it did not possess the comparative information about the air pollution levels during the period concerned. It was explained to the applicant that, in accordance with the Law on Access to Public Information, only "existing" information (that which had been previously created or documented) was considered public information. Considering that the Ministry did not possess the requested information, nothing could be done in terms of granting the applicant's request. Lastly, it was stated that the Commissioner had requested that the Cabinet of Ministers takes measures to ensure that the Ministry duly complies with its tasks and obligations in

accordance with the law, specifically as regards the implementation of State policy in the field of protection of the environment and ecological safety, and in particular air quality.

THE COURT'S ASSESSMENT

I. SCOPE OF THE CASE

15. In his initial application the applicant complained, under Articles 10 and 13 of the Convention, of a violation of the right to access public information and a lack of effective remedies in respect of the non-enforcement of the court judgment adopted in his favour ordering the provision of public information to him. The case was communicated to the Government under the above-mentioned provisions.

16. In his observations in reply to those of the Government the applicant raised, for the first time, a complaint under Article 8 of the Convention that his private life had been affected, as the information he had asked for had concerned him personally. He stated that he had some health issues which were affected by the quality of the air and that he had suffered from the incidents that had occurred in the Kyiv Region and that had prompted his request. The applicant asked the Court to accept that additional complaint, considering that he had not been represented by a lawyer at the time of the submission of his application.

17. Having been invited to comment on the matter, the Government stated that the complaints under Article 8 had not been part of the applicant's initial complaints and could not have been accepted for additional communication, including because they had been submitted to the Court more than six months after the delivery of the final judgment in the applicant's case.

18. The Court notes that that the applicant's new complaint, raised after the parties had commented on the original complaints, cannot be considered an elaboration of those original complaints to the Court. It is further noted that the applicant failed to provide a detailed explanation of his Article 8 complaints, as well as any supporting documents, including medical documents that would have confirmed that his state of health had been affected during the period in question. Moreover, as can be seen from the case file, at no point in time did the applicant present his case in the light of his right to private life at the domestic level. Furthermore, in his request for information the applicant had not provided any explanation of the reasons why he had asked for that information except for a general reference to the potentially dangerous incidents and the public's right of free access to environment-related information. He followed the same line of reasoning during the ensuing proceedings.

19. The Court considers, therefore, that it is not appropriate to take up these matters in the context of the present case (see, for example, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

20. The Court further notes that, being the master of characterisation to be given in law to the facts of the case, it considers that the applicant's complaints fall to be examined under Article 10 only (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

21. The Government contended that the applicant had failed to exhaust domestic remedies, as he had not submitted any claims for compensation of non-pecuniary damage inflicted by State authorities under Article 1173 of the Civil Code. In that connection they provided a reference to a domestic court judgment in which the plaintiff's claims for non-pecuniary damage against the Ministry of Health for the non-provision of a reply to his request for public information had been granted; he had been awarded 1,500 Ukrainian hryvnia. They further argued that the applicant had also failed to submit his own application to the police to have a criminal case opened into the wilful non-enforcement of a court judgment. The Government further stated, referring to the principles established by the Court in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 156-7, 8 November 2016), that the applicant's complaints were inadmissible (essentially under the *ratione materiae* criteria), as he had failed to show that his request for information was instrumental for his freedom of expression, particularly as he had failed to explain the purpose of his request and because the information requested had not been "ready and available".

22. The applicant disagreed. He emphasised that he had been trying to obtain the enforcement of the judgment obliging the Ministry to provide him with information for about five years and had been active in those proceedings. He also noted that it had been difficult to assume that even though the bailiff's submission to the police regarding the wilful non-enforcement of a court judgment had been futile (having been rejected for the lack of elements of an offence), his own attempt to have a criminal case opened would have been more successful. He further stated that in cases where the authorities had been expected to take specific action to comply with a final court judgment and not simply pay compensation, the Court had repeatedly dismissed an objection of non-exhaustion of domestic remedies on the basis of the possibility of bringing a tort action against the State because a compensatory remedy in the form of a claim for damages could not provide adequate redress in a situation where the authorities were called upon to take specific, i.e. non-substitutable, measures, as was the case, for example, where

they had to accelerate and complete the process of restitution of agricultural land. He referred in that respect to, *inter alia*, *Hadzhigeorgievi v. Bulgaria* (no. 41064/05, § 50, 16 July 2013).

23. The Court has already found, in cases in which an applicant has complained of the non-enforcement of a final judgment and the Government have raised a preliminary objection of non-exhaustion of domestic remedies, that a person who has obtained a final judgment against a State cannot be expected to bring separate enforcement proceedings; where a defendant State authority was duly notified of the judgment, it must take all necessary measures to comply with it or to transmit it to another competent authority for execution (see, for instance, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 46, 15 October 2009, with further references). It cannot therefore be inferred from the fact that if the applicant had not himself sought to have a criminal case opened into the wilful non-enforcement of a court judgment that he had failed to exhaust domestic remedies. The Court also fails to see how that remedy could have led to the actual enforcement of the judgment.

24. As to the Government's argument regarding compensation, the Court agrees with the applicant and reiterates its case-law to the effect that in cases where the authorities were expected to take non-substitutable actions to comply with a final court judgment, as in the present case, a compensatory remedy in the form of a claim for damages could not provide adequate redress unless it had been shown that the authorities had already taken reasonable measures to honour the obligations imposed on them by the Convention (see, for example, *Hadzhigeorgievi*, cited above, § 50, with further references).

25. As for the applicability of Article 10 of the Convention in the present case, the Court reiterates that this provision does not confer on the individual a right of access to information held by a public authority, nor does it oblige the State to impart such information to the individual. However, such a right or obligation may arise notably where, as in the present case, the disclosure of the information has been imposed by an enforceable court order (see *Magyar Helsinki Bizottság*, § 156, cited above, and *Zhokh v. Ukraine* [Committee], no. 29319/13, 28 September 2023).

26. The Government's preliminary objections must therefore be dismissed.

27. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Government did not provide any observations on the merits of the application.

29. The applicant argued that the non-enforcement of the domestic court's final judgment ordering the Ministry to provide the information he had requested had infringed his rights under Article 10, in particular his right to receive and impart information about the environment. He emphasised the importance of guaranteeing access to environmental information to the public. In that respect he referred to a number of United Nations instruments, particularly the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Council of Europe instruments, *inter alia*, Recommendation Rec (2002)2 of the Committee of Ministers to member states on access to official documents and the 2009 Convention on Access to Public Documents.

30. The Court considers that the failure of the Ministry to provide the applicant with the information, despite the final judgment of the Kyiv Circuit Administrative Court of 17 September 2015 ordering that it be provided to him, constituted an interference with his rights under Article 10. It reiterates that such an interference infringes the Convention if it does not meet the requirements of the second paragraph of that provision as to being "prescribed by law", pursuing one or more of the legitimate aims set out in that paragraph, and being "necessary in a democratic society" in order to achieve those aims (see *Zhokh*, cited above, § 23). In the circumstances of the present case the Court considers that the issues of the legality of the interference, the legitimate aim pursued and its necessity are closely interconnected, and it will examine them together (see, for a similar approach, *Samsonov v. Russia*, no. 38427/11, § 23, 9 June 2020, and *X and Y v. Croatia*, no. 5193/09, § 105, 3 November 2011).

31. The Court notes at the outset that the domestic court's order that the Ministry provides the applicant with the information he had requested was based on an assumption that the Ministry, as the central executive body responsible for environmental matters, including monitoring and reporting on the state of environment, must have had the information requested. At the time of the adoption of the judgment of 17 September 2015 it had not yet been known that the Ministry, as it was later discovered, did not possess the information requested, or part of that information.

32. The Court notes in that connection that, in accordance with the Charter of the Ministry (as cited in the judgment of 17 September 2015 – see paragraph 5 above) it is indeed a central State body responsible for environmental policy, including monitoring and reporting. It would not therefore be unreasonable to infer that the Ministry must have had the information requested or that it should have at least transferred the applicant's request to another body directly responsible for, for example, air pollution monitoring (indeed, this is what happened in the present case – the applicant's request was examined by the State Sanitary and Epidemic Service). In that regard, the present case is somewhat similar to *Association Burestop 55 and*

Others v. France (nos. 56176/18 and 5 others, 1 July 2021), in which a State body was obliged by law to make public information on certain hazardous activities and the applicant NGOs argued that it had been inadequate.

33. On the other hand, as was established during the ensuing proceedings in the present case, particularly by the court judgment of 25 November 2015, the relevant information, most notably the key piece of information – the comparative concentration of dangerous gases in the air during relevant time in the form requested by the applicant – was non-existent. The Court notes that, as it appears from the documents available, following the incidents in the Kyiv Region, certain measures, including air and soil tests, were undertaken by the authorities. It also appears that at least some information relating to the levels of pollution at the relevant time was made public and was available online (see paragraphs 3 and 12 above). In the absence of copies of the relevant documents and the possibility of accessing the information published online the Court is precluded from assessing the scope of that information, but the fact that some information was made public and that the applicant was informed of where to access it has not been contested by him (see, *mutatis mutandis*, *Saure v. Germany*, no. 8819/16, §§ 50 and 56, 8 November 2022).

34. Furthermore, it would not be unreasonable to suggest that if at the relevant point in time the data relating to the levels of some dangerous gases had not already been gathered, such data could not have been gathered or created later (and therefore could not be provided to the applicant in the form in which he requested it) for the simple reason that it was too late. In this connection the Court notes that the applicant had not complained before the domestic courts or before the Court of an unreasonable delay in the provision of a reply to his request, even though the domestic legislation provides a very short time-limit of forty-eight hours for replies to requests for access to environmental information in the event of accidents. In this connection the Court cannot but also note that the applicant himself submitted his request about ten days after the fire at the petroleum depot, which he considered the most preoccupying incident. Moreover, in that request he had not claimed that he had been trying to obtain information about the incident but was unsuccessful or that the information given by the authorities had been inadequate.

35. The Court further notes that the domestic courts established on several occasions that the information as provided to the applicant was insufficient and that the operative part of the judgment of 17 September 2015, ordering the provision of information to the applicant as he had requested, had been clear and unequivocal and did not contain any reservations. The Court, however, considers that the circumstances as described above objectively prevented the full enforcement of the court judgment adopted in the applicant's favour as per the wording of the judgment, particularly as to the comparative data about dangerous gases. Nevertheless, other relevant – and

readily available – information was provided to the applicant. In this connection the Court reiterates that one of the criteria applicable in terms of the right of access to public information is that it must be "ready and available" (see *Magyar Helsinki Bizottság*, §§ 169-70, cited above; contrast *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, § 46, 28 November 2013). A similar requirement is also set out in Ukrainian domestic law and was emphasised by the Ukrainian Parliament Commissioner for Human Rights (see paragraph 14 above).

36. In view of the above, the Court considers that, in the circumstances of the present case, it cannot be said that the applicant's right of access to information in terms of Article 10 of the Convention was disproportionately impaired.

37. At the same time, the Court notes that the deficiencies in the work of the Ministry and related bodies and State services, particularly with respect to systematisation and dissemination of environmental information, raise serious issues in the light of the importance of such activities and the public's access to environmental information, especially in what concerns hazardous activities or events (see *Association Burestop 55 and Others*, § 109, cited above). Nevertheless, in the circumstances of the present case and considering the limits of the applicant's complaint, the Court cannot derive any wider conclusions on that matter.

38. There has, accordingly, been no violation of the applicant's right of access to information as provided by Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 11 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President