

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

ENG - 2014/1

## Application Form

### About this application form

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

**Warning:** If your application is incomplete, it will not be accepted (*see Rule 47 of the Rules of Court*). Please note in particular that Rule 47 § 2 (a) provides that: "All of the information referred to in paragraph 1 (d) to (f) [*statement of facts, alleged violations and information about compliance with the admissibility criteria*] that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

#### Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

#### Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

#### A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

2. First name(s)

3. Date of birth

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |

 e.g. 27/09/2012

4. Nationality

5. Address

6. Telephone (including international dialling code)

7. Email (if any)

8. Sex

- ☐ male  
☐ female

#### B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

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| 0 | 2 | 0 | 3 | 2 | 0 | 1 | 1 |
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 e.g. 27/09/2012

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

**C. Representative(s) of the applicant**

If the applicant is not represented, go to Section D.

**Non-lawyer/Organisation official**Please fill in this part of the form if you are representing an applicant but *are not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

**Lawyer**Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname

 van Schaik

25. First name(s)

 J.P.A.

26. Nationality

 Dutch

27. Address

 Stationsstraat 51H 3905 JH Veenendaal

28. Telephone (including international dialling code)

 +31 (0)318 55 34 74

29. Fax

 +31 (0)318 55 34 73

30. Email

 schaik@vanschaikadvocaten.nl
**Authority**

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

 C.B.A. Spil  
Chairman

32. Date

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e.g. 27/09/2012

**D. State(s) against which the application is directed**

33. Tick the name(s) of the State(s) against which the application is directed

- |   |  |
|---|--|
| <input type="checkbox"/> ALB - Albania                | <input type="checkbox"/> ITA - Italy                                       |
| <input type="checkbox"/> AND - Andorra                | <input type="checkbox"/> LIE - Liechtenstein                               |
| <input type="checkbox"/> ARM - Armenia                | <input type="checkbox"/> LTU - Lithuania                                   |
| <input type="checkbox"/> AUT - Austria                | <input type="checkbox"/> LUX - Luxembourg                                  |
| <input type="checkbox"/> AZE - Azerbaijan             | <input type="checkbox"/> LVA - Latvia                                      |
| <input type="checkbox"/> BEL - Belgium                | <input type="checkbox"/> MCO - Monaco                                      |
| <input type="checkbox"/> BGR - Bulgaria               | <input type="checkbox"/> MDA - Republic of Moldova                         |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland            | <input type="checkbox"/> MLT - Malta                                       |
| <input type="checkbox"/> CYP - Cyprus                 | <input type="checkbox"/> MNE - Montenegro                                  |
| <input type="checkbox"/> CZE - Czech Republic         | <input checked="" type="checkbox"/> NLD - Netherlands                      |
| <input type="checkbox"/> DEU - Germany                | <input type="checkbox"/> NOR - Norway                                      |
| <input type="checkbox"/> DNK - Denmark                | <input type="checkbox"/> POL - Poland                                      |
| <input type="checkbox"/> ESP - Spain                  | <input type="checkbox"/> PRT - Portugal                                    |
| <input type="checkbox"/> EST - Estonia                | <input type="checkbox"/> ROU - Romania                                     |
| <input type="checkbox"/> FIN - Finland                | <input type="checkbox"/> RUS - Russian Federation                          |
| <input type="checkbox"/> FRA - France                 | <input type="checkbox"/> SMR - San Marino                                  |
| <input type="checkbox"/> GBR - United Kingdom         | <input type="checkbox"/> SRB - Serbia                                      |
| <input type="checkbox"/> GEO - Georgia                | <input type="checkbox"/> SVK - Slovak Republic                             |
| <input type="checkbox"/> GRC - Greece                 | <input type="checkbox"/> SVN - Slovenia                                    |
| <input type="checkbox"/> HRV - Croatia                | <input type="checkbox"/> SWE - Sweden                                      |
| <input type="checkbox"/> HUN - Hungary                | <input type="checkbox"/> TUR - Turkey                                      |
| <input type="checkbox"/> IRL - Ireland                | <input type="checkbox"/> UKR - Ukraine                                     |
| <input type="checkbox"/> ISL - Iceland                |  |

**Subject matter of the application**

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

**E. Statement of the facts**

34.

Article 1 of Directive 2008/50/EC on air quality defines as subject matter: "This directive lays down measures aimed at defining and establishing objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole." This case is about traffic related air pollution and human health.

Annex III of this Directive 2008/50 refers to traffic related air pollution such as sulphur, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10 and PM2,5), lead, benzene and carbon monoxide. To protect human health this Annex III defines 2 criteria. One criterion under A1 requires assessment at all locations and the second criterion under C defines the maximum distances for assessment points based on fixed measurement as well as on modeling:

- under A1: "Ambient air quality shall be assessed at all locations except those listed in paragraph 2, in accordance with the criteria established by Sections B and C for the location of sampling points for fixed measurement." These exceptions listed in paragraph 2 concern just places where members of the public do not have normal access. So, this criterion A1 implies that pollution should remain under the limit values set by the Directive at all accessible locations.
- under C: "for all pollutants, traffic-orientated sampling probes shall be at least 25 m from the edge of major junctions and no more than 10 m from the kerbside". So, this criterion C for sampling probes together with criterion A1 implies that most assessment points should stay within 10 meter from the kerbside. Only at road junctions and at assessment points based on fixed measurement, a relatively small number of exceptions on this distance may exist.

In view of costs almost all assessment points are based on modeling. The limitation in Annex III under C: "In so far as is practicable," refers in practice only to a limited number of fixed sampling points for measurement (less than 100 in the Netherlands). In practical terms the above implies that most assessment points should meet the two criteria above under A1 and C:

1. Everywhere where humans have access, pollution should remain under the defined limit values.
2. All assessment points outside junctions, based on modeling, should stay within 10 meter from the kerbside.

Directive 2008/50/EC has been correctly transposed in Dutch law by the Law on Environment Management (Wet Milieubeheer) and the Regulation on Air Quality Assessment 2007 (Regeling Beoordeling Luchtkwaliteit 2007).

There is an impressive on-line system, called NSL, reflecting all aspects of each assessment point whether by measurement or by modeling. See this NSL system at work at <https://www.nsl-monitoring.nl/viewer/>.

The Dutch government also made available to the public various on-line tools to assess air quality by modeling. See for example: <http://car.infomil.nl/Login/Login.aspx?ReturnUrl=%2fDefault.aspx>.

Helvoirt is located in the southern part of the Netherlands between 's-Hertogenbosch and Tilburg. A very busy main road between these two towns, the N65, crosses the village. There exists a relatively high death ratio in Helvoirt compared to more or less identical villages in the neighborhood. A causal relation might exist between this busy road and the high local death ratio. So, the applicant assessed air quality along the N65 and came to the conclusion that all NSL assessment points were outside the prescribed range of 10 meter. Applicant also came to the conclusion that pollution levels were almost consistently above the limit values prescribed by Directive 2008/50/EC when measured at or within 10 meter from the kerbside. Not only along the N65 but also along other busy town roads.

The local mayor and aldermen took no notice of these complaints. In other southern towns (Eindhoven, Helmond) the same situation arose. So various nearby residents to busy roads decided for legal actions. The Council of State is defined as the highest court in the Law on Environment Management. This law prescribes an immediate action plan whenever limit values are exceeded. In the case of Dieter Janacek (C-237/07, 25 July 2008) your court ruled that civilians must be in a position to require the competent national authorities to draw up an such an action plan.

**Statement of the facts (continued)**

35.

However, all legal proceedings from Helvoirt, Eindhoven and Helmond with the Council of State ended in non-admissibility. Despite the Law on Environment Management, despite your ruling with Dieter Janacek and despite established Dutch case law to investigate the merits of the case whenever a legal issue or penalty payments are at stake, the Council of State refused to enter into the merits of the case. Probably for this reason, a complaint at your court on October 4, 2013 (62949/13) on this attitude of the Council of State, ended also in non-admissibility.

During these legal proceedings with the Council of State a letter from the Ministry for Infrastructure and the Environment arrived on 25 July, 2013 stating, contrary to the law, that distances from the kerbside should be over 10 meter instead of below 10 meter. The practical result of this important difference is that NSL suggests that almost nowhere limit values are exceeded. After pointing out the two legal criteria under A1 and C above to the Minister in person, the Ministry did not change the actual practice. This constitutes a willful, consistent and important deviation from the law protecting human health.

Article 355 sub 4 of the Dutch Penal Code (Wetboek van Strafrecht), defines a willful, consistent and important deviation from the law as a misconduct (or misfeasance) in public office. According to article 162 of the Dutch Law on Criminal Prosecution, every public board or official should immediately report this misconduct to the public prosecutor. However, the Council of State as public board took no notice of this misconduct in the various proceedings. As last resort letters were sent on February 12 and July 4, 2014 to the chairman of the Council of State to remind him of his duty according to article 162 of the Law on Criminal Prosecution, in person as official and as chairman of a public board, to immediately report this misconduct to the public prosecutor. These letters were answered on March 11 and July 23, 2014. First with the statement not to communicate on proceedings given the independence of the Department Legal Affairs of the Council of State. In truly independent institutions, such an excuse would never be used. The second letter said that the Council of State did not lodge any criminal complaint and told applicant that further reminders would not be answered.

In view of the consistent refuse of the Council of State to investigate any complaint on the merits, applicant filed a criminal complaint with the prosecutor on October 17, 2013. This complaint presented among others the facts mentioned before. Attention was paid to the refusal of mayor and aldermen in the municipality of Helvoirt to file their own complaint as required by article 162 of the Dutch Law on Criminal Prosecution and their collaboration with the Ministry to hide important deviations from the law protecting human health. This government conduct is entirely contrary to your ruling on November 30, 2004 in Oneryildiz-v.- Turkey: "The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life." Here, the State, collaborating with municipalities, seriously violated that legislative and administrative framework by hiding actual threats to the right to life. The prosecutor however, decided on November 12, 2013 not to prosecute. His only argument was that the facts presented did not constitute a criminal offence.

On January 20, 2014 a so-called article 12 (Law on Criminal Prosecution) complaint was lodged at the Regional Court in 's-Hertogenbosch. On June 10, 2014 this Court concluded that the facts as presented gave insufficient clues that a criminal offence is at stake and denied prosecution. The Regional Court in 's-Hertogenbosch is the highest court in these prosecution matters and further appeal is not possible.

Nevertheless applicant wrote a letter on July 4 2014 to the chairman of the Regional Court to remind him of his duty in person as official and as chairman of a public board in article 162 of the Law on Criminal Prosecution to report immediately this misconduct to the public prosecutor. This letter was answered on July 15, 2014 interpreting applicant's reminder as a complaint and not as a reminder to act according to public duty. Thus the excuse not to lodge a criminal complaint was found in the fact that the internal regulation on complaints forbids applicants complaining about legal decisions.

**Statement of the facts (continued)**

36.

In a last attempt to change these obvious violations of the law, in November 2014 applicant informed the special committee of the Dutch Parliament responsible for environment and infrastructure. Despite written confirmation that the information was transmitted, not any action was taken.

The facts presented here show clear and written evidence of a central government acting willfully and consistently contrary to an important aspect of the law protecting human health. On top, all organs of the State, including the highest courts, refuse to compare a clear letter of the Minister about minimum distances to the kerbside (minimum > 10 meter) against a clear law (maximum < 10 meter), thus violating their legal duty according to the local article 12 of the Law on Criminal Prosecution, let alone their duty according article 2 of the Convention .

Thus, at stake in this case is primarily the question whether a willful, consistent and important deviation from the law protecting human health, thus denying the positive obligation to take all appropriate steps to safeguard life, is a criminal offence or at least a violation of article 2 of the Convention. The facts here are different from the facts in Oneryildiz-v.- Turkey where negligence caused immediate death. Here this willful, consistent and important deviation from the law protecting human health, causes long term death. However on a scale much larger then in Oneryildiz-v.- Turkey.

There is ample scientific evidence of the size of this threat to health. Here follows just one quote out of many. A statement of the EU Commissioner for the Environment e.g. cites in his executive summary on Air Quality in Europe 2012: "Air pollution is bad for our health. It reduces human life expectancy by more than eight months on average and by more than two years in the most polluted cities and regions."

See [http://www.eea.europa.eu/publications/air-quality-in-europe-2012/at\\_download/file](http://www.eea.europa.eu/publications/air-quality-in-europe-2012/at_download/file)

European pollution maps show that the southern part of the Netherlands belongs to these most polluted cities and regions. This quote indicates that hundreds of thousands residents near to busy roads in the Netherlands are robbed of up to 1-2 years from their life.

Besides violation of article 2, the facts presented here represent also violations of article 8 and 13, besides Article 1 sub 1 First Protocol. The relevant arguments may be found under section F. page 37 of this complaint.



**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

37. Article invoked

Article 2

Explanation

9. Article 2 sub a. of the Convention states that "Everyone's right to life shall be protected by law." and Article 2 sub b. and your case law give almost no leeway for any margin of appreciation. Since the ruling of your Grand Chamber in 2004 under point 89 with Öneriyildiz v. Turkey it is established case law that states have: "The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2". This ruling was followed by many others confirming that local authorities have little margin of appreciation left when it comes to article. Since Osman v. the United Kingdom, no. 14/1997/798/1001 on 28.10.1998, it has been made clear however that Article 2 should "be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities". Applicant took therefore care to provide a viable technical and financial alternative by proposing car tunnels. There is also no doubt that your ruling in Berü v. Turkey, no. 47304/07 on 11.01.2011 that authorities should be aware of "immediate risk" is applicable in this case and that authorities "neglected to take operational measures to prevent that risk from materializing" as Kemaloglu v. Turkey, no. 19986/06 on 10.04.2012 requires. So Article 2 of the Convention looks applicable.

Article 8

Article 8 sub 1 of the Convention states that "Everyone has the right to respect for his private and family life, his home and his correspondence." A long list exists of ECHR judgments where art. 8 has been violated regarding: neighboring noise, industrial pollution, other adverse effects on the environment and so on. There is a wide body of evidence that pollution has adverse effects on the health aspects of private and family life, let alone home values. It is true that article 8 sub 2 and case law enlarged the margin of appreciation compared to article 2 sub 2. However, notice should be paid to the introduction phrase of article 8 sub 2 "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law". In the present case there was negative interference by public authorities contrary to the protection of health and a clear violation of the law. This almost unbelievable behavior of the Dutch state is beyond any margin of appreciation. So Article 8 of the Convention looks applicable.

Article 13

This article guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The health aspects of air pollution require immediate action as confirmed by the European Court of Justice in C-237/07, Dieter Janacek. This case demonstrates that immediate action and effective remedies are not available, not by the administrative proceedings as prescribed by the Act EM and not by civil proceedings. In the Netherlands civil proceedings are necessarily based on unlawful government acts. In the domestic proceedings applicant argued in vain before the Council of State that civil proceedings in comparable cases took many years, far over the local limits set for the maximum length of proceedings, were all ended for lack of funds and risked to end in non-admissibility due to various very local legal arguments.

14. Article 1 sub 1 First Protocol

It is self-evident that nearby busy roads affect the value of nearby homes negatively. Simple case law and Google search do not leave any doubt. The refusal of all municipalities to discuss tunnel alternatives seriously and hiding facts by willful, consistent and important infringements of the law protecting human health, leaves little doubt that property rights are unnecessarily endangered.

**G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.**

|   |   |
|---|---|
| <div>38. Complaint</div> <div>Criminal complaint on October 17, 2013.</div> | <div>Information about remedies used and the date of the final decision</div> <div>Decision of the prosecutor dated November 12, 2013 not to prosecute.</div> <div>Appeal on January 20, 2014 by a so-called article 12 (Law on Criminal Prosecution) complaint, lodged at the Regional Court in 's-Hertogenbosch.</div> <div>On June 10, 2014 the Regional Court in 's-Hertogenbosch denied prosecution.</div> <div>The Regional Court in 's-Hertogenbosch is the highest court in these prosecution matters and further appeal is not possible.</div> |
|---|---|



39. Is or was there an appeal or remedy available to you which you have not used?

☐ Yes

☒ No

40. If you answered Yes above, please state which appeal or remedy you have not used and explain why not.

#### H. Information concerning other international proceedings (if any)

41. Have you raised any of these complaints in another procedure of international investigation or settlement?

☐ Yes

☒ No

42. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

43. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

☒ Yes

☐ No

44. If you answered Yes above, please write the relevant application number(s) in the box below.

62949/13 dated October 4, 2013

**I. List of accompanying documents**

You should enclose full and legible *copies* of all documents.

No documents will be returned to you. It is thus in your interests to submit copies, not originals.

You **MUST**:

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- NOT staple, bind or tape the documents.

45. In the box below, please list the documents in chronological order with a concise description.

1. July 25, 2013: Ministry defines assessments points as over 10 meter(law prescribes under)
2. Augustus 4, 2013: Reporting this criminal offence to police station.
3. August 20, 2013: Police officer refused to take action (no criminal offence).
4. August 28, 2013: Repeated request to take action.
5. October 9, 2013: Referral to the public prosecutor in s'-Hertogenbosch.
6. October 17, 2013: Formal request to the public prosecutor to prosecute.
7. November 12, 2013: Prosecutor refuses to take action (no criminal offence).
8. January 20, 2014: art.12 (Law Criminal Prosecution) complaint lodged at Regional Court.
9. February 12, 2014: Applicant reminds Chairman Council of State of his legal art. 12 SV duty.
10. March 11, 2014: Chairman Council of State refuses to communicate on the merits of his art. 12 SV duty.
11. May 5, 2014: Hearing, applicant's pleading note (no written note from prosecutor).
12. June 10, 2014: Decision Regional Court not to prosecute.
13. July 4, 2014: Applicant reminds Chairman Regional Court of his legal art. 12 SV duty.
14. July 4, 2014: Applicant reminds Chairman Council of State again of his legal art. 12 SV duty.
15. July 13, 2014: Chairman Council of State admitted not having lodged a criminal complaint as art. 12 SV requires.
16. July 15, 2014: Chairman Regional Court refuses to communicate on the merits of his art. 12 SV duty.
- 17.
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- 25.

Any other comments

Do you have any other comments about your application?

46. Comments

On this, almost identical, subject matter, 10 criminal complaints were lodged in total during 2013 in various places in the southern part of Holland. The public prosecutor decided to postpone his decision on 8 claims waiting on the outcome of this appeal with the Regional Court in 's-Hertogenbosch based on article 12 of the Law on Criminal Prosecution. The Regional Court decided in his decision on June 10, 2014 in the same way on a comparable complaint from Helmond.

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

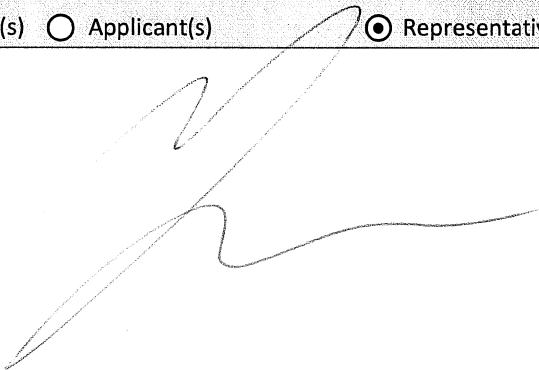
47. Date

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| 2 | 4 | 1 | 1 | 2 | 0 | 1 | 4 |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2012

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) ☐ Applicant(s) ☒ Representative(s) - tick as appropriate



Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of ☐ Applicant ☐ Representative - tick as appropriate

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The completed application form should be signed and sent by post to:

The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE