



## Common Mistakes in Filling in the Application Form and How to Avoid Them

### **Mistake no. 1: not using the Court's current application form**

Applicants must use the latest official Court application form. If possible, they should download the form from the Court's website. This will ensure that the applicant sets out all the information which the Court needs for examining an applicant's complaints. The downloaded form also contains a barcode at the end which facilitates the entry of an applicant's details directly into the Court's database.

Old forms will not be accepted. You can always obtain the new form by writing to the Court.

### **Mistake no. 2: not putting a summary of the case on the application form**

The Court wants applicants to put a concise and complete version or summary of their story – with facts, the alleged violations and the remedies exhausted – on the application form itself. There are three pages set aside for facts (Part E.), two pages for the violations (Part F.) and a page for the outline of remedies (Part G.). By reading this summary, the Registry can immediately assess what the case is about and allocate it to the appropriate judicial formation, speeding up the examination of complaints and preventing cases waiting years for decision.

This summary on the application form is obligatory. Do not leave the application form blank and refer to attached pages.

It is possible, but not required, for applicants to add an additional statement expanding on the facts, complaints or remedies used. This extra statement should be not more than 20 pages. It should not add new complaints or violations but only develop what is set out on the form.

Starting to set out the facts or complaints on the application form and continuing on additional sheets of paper annexed to the form is not what the Court wants. Nor is it good enough to summarise the case in a few lines on the application form and then continue for 20 pages. The Court must be able to understand, by reading just the application form, the key facts of the case, which rights have been infringed and how, and the remedies which have been exhausted and on which dates.

### **Mistake no. 3: not attaching the decisions or documents setting out the measures at the heart of the case**

Applicants have to support their complaints by documentary evidence. This means that if there is a complaint about an official act or decision, a copy of that decision or document attesting to that official act or measure must be provided. A translation of the official decision or document cannot replace a copy of that decision or document. The Court cannot just take the word of applicants for what they say has happened. So, if an applicant complains that his house is being expropriated, he must attach to the application form a copy of the official decision ordering the expropriation; if an applicant alleges that she has been refused legal aid for her child custody proceedings, she must provide a copy of the document by the decision body setting out that refusal. If there are a number of documents relating to a particular incident or procedure, an applicant should err on the side of caution and provide all that appear relevant.

If you are unable to obtain a copy of a decision or document, you should explain this in the application form. But you must show that it was practically impossible for you to obtain the document: applicants are expected to take reasonable steps to apply to authorities for copies of documents and to comply with reasonable formalities in that respect.

**Mistake no. 4: not providing copies of decisions and documents showing that the applicant has brought all his/her complaints before the national courts or brought his/her complaints before the Court within the four-month time-limit**

The Court, as an international court, cannot examine complaints by anyone if they have not first given the national authorities, the courts in particular, the opportunity to put the matter right. This means that an applicant must bring all the matters which she or he wants to complain about before the national courts and use all the available appeals up to the highest level.

An applicant must therefore substantiate before the Court that this has been done by sending copies of all the court decisions, not just the highest appeal decision, and also copies of the grounds of appeal and written records of hearings which show that he or she raised all the allegations made before the Court in the national system. If a national court issues the decision and then a separate document setting out the reasons separately, both documents must be provided.

If you are unable to obtain a copy of a decision or document, you should explain this in the application form. But you must show that it was practically impossible for you to obtain the document: applicants are expected to take reasonable steps to apply to court registries or other authorities for copies of documents and to comply with reasonable formalities in that respect. If the final decision in the process of exhausting domestic remedies has not yet been issued, it may be premature to apply to the Court: you should obtain the text of the decision and then submit it with the completed application form to the Court.

You must also provide proof that you have lodged your case with the Court within four months from the final decision in that process of exhaustion of domestic remedies. This means you should send a copy of the decision containing the date or, if you did not receive a copy of the final decision on the date it was delivered or made public, you must send proof of the date of service, for example evidence of the date of receipt, or a copy of the registered letter or envelope. Where no remedies were available, you must show that you have lodged the complaint within four months of the act, measure or decision complained of and submit documentary evidence of the date of the act, measure or decision.

**Mistake no. 5: not sending the application form with the original signature at the end**

The Court's application form is a legal document with legal consequences. The form with the original signature of the applicant or his or her lawyer must be provided. A photocopy of the signed version will not do. So, it also serves no purpose to fax an application form in order to lodge an application with the Court.

**Mistake no. 6: where companies or organisations do not fill in the details of the application form identifying their official representative**

Even where an organisation or company has a lawyer, it must also set out in the relevant fields (Part D.1.) the name, contact details and function of the official in the organisation authorised to act for it in bringing the case to the Court and to sign the authority section to appoint a lawyer. This official representative might be the person specifically designated by the board, or council of administration for that purpose, or the person who is authorised generally under domestic law or the organisation's articles to act on its behalf. In a few cases, the official representative may also be a lawyer who can act in a legal capacity. But this should also be made clear on the form. Copies of the minutes, articles, extract from a domestic register or other form of authorisation proving that the official representative has the capacity to act must also be provided.

**Mistake no. 7: not filling in the Statement of violations**

An applicant must put down the gist of what he or she is complaining about. The Court cannot infer from the facts or domestic court documents what the applicant considers to be in breach of his or her rights. An applicant should try and identify those Articles of the Convention which cover what he or she complains about – the Articles are framed in very plain and general terms that are easily understandable, such as ill-treatment, right to liberty, fair trial rights, family life rights, freedom of expression, etc. It is crucial to write down both the Article of the Convention and in a few brief sentences how it has been infringed – the Court cannot guess what an applicant objects to or make up the complaints for him or her. For example:

Article 3 The police kept me handcuffed in a cell without heating and gave me no food for three days. I became ill and needed treatment from the doctor for bronchitis.

or

Article 5 I was detained wrongfully at the border police station for three days without being told why or being allowed to phone a lawyer or my family.

or

Article 6 The criminal proceedings against me lasted 9 years and 8 months for two levels of jurisdiction. Also I was not allowed to cross-examine the witness who gave the sole evidence against me.

or

Article 8 My right to family life has been violated as my daughter has been adopted without my consent and without me being consulted in advance or being involved in the procedures.

**Mistake no. 8: leaving blank the part of the form dealing with remedies**

Applicants must fill in Part G. concerning the remedies they have exhausted giving dates so that the Court can quickly see that they have complied with the four-month time-limit.

Only a summary of the remedies need be given, with the name of the court, the date and a concise description of the decision taken. For example:

Article 5 complaint about arrest by police High Court rejected claim on 05/12/13; leave to appeal refused by Court of Appeal on 14/01/15

Article 6 complaint about neighbour dispute County Court rejected claim on 03/04/12; Court of Appeal dismissed appeal on 04/12/14

Extra details about the court proceedings or how the courts dealt with complaints can be added in supplementary annexes if necessary.

If an applicant thinks that there were no remedies to exhaust as they were non-existent or ineffective or inaccessible in some way, the applicant should put down this reasoning briefly.

**Mistake no. 9: forgetting to tick the country box**

An applicant has to specify the Contracting State (a European country which has signed up to the European Convention on Human Rights) which is alleged to be responsible for the breach of his or her rights. The Court's competence depends on this. It is not for the Court to "guess" from reading the application form and attached documents.

You must tick the box of at least one of the Contracting States listed in the application form for it to be complete.

**Mistake no. 10: forgetting to put a list of the documents on the form**

An applicant must list on the application form in the space provided (carrying over to an attached sheet if the space is insufficient) all documents attached to the form. The Court must be able to find particular documents when examining the case; listing the documents, with page numbers and in chronological order, on the application form is essential for a speedy and efficient sifting of incoming cases.

**Mistake no. 11: sending a separate authority form instead of filling in and signing the authority section on the application form**

If an applicant is represented by a lawyer or other person, both the applicant and the designated representative – whose identifying details must be indicated on the application form – must sign the authority section on the application form. The applicant's signature provides the necessary proof that the representative has been authorised by the applicant to act on the latter's behalf; the representative's signature provides confirmation that this person has in fact accepted to act for the applicant. Where the applicant is an organisation, it is the official or officer of that organisation and the lawyer who sign.

A separate authority form will not be accepted unless adequate explanations are provided as to the existence of insurmountable practical obstacles in signing the authority section on the form or it is used at a later stage to appoint a lawyer/representative after the application has been lodged with the Court.

**Mistake no. 12: sending the application form at the last moment before the four-month time-limit expires**

If an applicant misses something out in the application form or omits a relevant document, the application form is likely to be rejected as incomplete. If the form has been sent at the last moment, this will give the applicant no time to re-submit a second and complete application form. So you are strongly advised to send your application form as soon as practicable after the last remedy in the national system has been exhausted or where there are no remedies as soon as possible after the events being complained about.

**Mistake no. 13: re-submitting a second incomplete application form**

If the applicant's first application form was rejected as incomplete, no file is kept, neither the form nor any of the attached documents. So, merely sending the missing document or a letter with the missing information will not count: you must download a fresh application form, fill it in fully and append to that form copies of all the relevant documents, even if you have sent the documents in previous correspondence addressed to the Court.