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

Please note that this form will work correctly only with Adobe Reader 9 Upwards (download available from www.adobe.com).
Please save a copy of this form locally before filling it in using Adobe Reader, then print it and post it to the Court.

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

Van der Kallen

2. First name(s)

Ludovicus Hermanus

3. Date of birth

1	0	0	8	1	9	4	8
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

4. Nationality

Dutch

5. Address

Nieuwstraat 4
4611 RS Bergen op Zoom
The Netherlands

6. Telephone (including international dialling code)

0031164265158

7. Email (if any)

vanderkallen@home.nl

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)

D	D	M	M	Y	Y	Y	Y

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

25. First name(s)

26. Nationality

27. Address

28. Telephone (including international dialling code)

29. Fax

30. Email

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

32. Date

D D M M Y Y Y Y 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

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

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.

Applicant (Louis van der Kallen) stood trail before the District Court of Breda and was convicted for violation of article 272 of the Dutch Code of Criminal Law. This article 272 stipulates that it is forbidden to publish information one has received under the obligation of secrecy. Violation of the article is a crime.
Applicant appealed to the Court of Appeal in 's-Hertogenbosch and was again convicted. He was fined 500 euros.
Applicant then appealed to the High Court of the Netherlands. On 18 februari 2014 decisionnumber S 13/00294 the Supreme Court of the Netherlands without comment dismissed all the five complaints which applicant's lawyer Mr Van Straalen had filed against the judgement of the Court of Appeal.
Thus the domestic remedies for applicant are exhausted.

Applicant is a member of the Municipality Council in the Municipality of Bergen op Zoom. As such in 2009 he investigated the causes of the failure of a urban developmentplan "Bergse Haven" (Port of Bergen op Zoom). This failure had caused financial damage of 50 Million euros or even more.
During his investigation he was allowed to see all the documents. Some of these documents were marked "secret" and some of them were not marked as such. The deliberations of many Council and Committee meetings on this subject which had been attended by applicant also had been declared "secret", although not all meetings.
During his investigation on September 21, 2009 applicant sent 60 written questions to the "College van Burgemeester en Wethouders" (Mayor and Aldermen). Applicant also published these 60 questions on his website on the Internet.
The Mayor found that in the questions number 52 and 53 (on which the whole criminal procedure concentrated) there was information from a secret report "Risicoprofiel Bergse Haven" (Risk Profile Bergse Haven) of March 21, 2007. The Mayor pressed charges against applicant whereafter applicant was prosecuted. Applicant on the contrary states that the Risicoprofiel was not marked "secret" and that in his questions no financial figures of the Risicoprofiel are mentioned, only some differences.
The issue here is that the content of the report "Risicoprofiel Bergse Haven" of 2007 is a report about financial risks of a urban developmentproject, which risk and forthcoming damages already had occurred before the investigation by applicant, and the content of the report or description of the (possible) financial consequences for the Municipality were no longer an interest which can be brought under the limited interferences allowed bij article 10 par. 2 of the European Convention on Human Rights. By declaring the subject or the report a secret and maintaining that status applicant was prohibited to speak and write about it and ask questions about it and he was prohibited to effectively do his public task as a member of the Council and was he unlawfully prohibited in his Freedom of Expression. The (secrecy of) financial risks (which risks had occurred) were no longer a legitimate aim and the imposed secrecy was no longer necessary as the Convention requires. Henceforth he was unlawfully convicted.

Damage for applicant:
Applicant was also a member of the Executive Board (Dagelijks Bestuur) of Waterschap Brabantse Delta (Waterdistrict Authority Brabantse Delta) and he was a member of the Accounting Committees of six other Waterdistrict Authorities. The statutes for these committees stipulate that a member shall not have been convicted for a crime. Hence his conviction applicant by law was no longer a member of these committees. Applicant also had to resign from the Executive Board mentioned, all causing severe loss of income for him of approximatily 49,000,-- (forty-nine thousand) euros (Board) and 10,000,-- (ten thousand) euros (Committees) annually.
Due to his conviction applicant is thus a victim of unlawful legislature or unlawful practice.

Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".

Statement of the facts (continued)

35.

Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".

Statement of the facts (continued)

36.

Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".

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

37. Article invoked	Explanation
Article 10 ECHR	Article 10(1) stipulates the principle of the right to freedom of expression, while Article 10(2), by referring to “duties and responsibilities” that go together with the exercise of this freedom, opens the possibility for public authorities to interfere in this freedom by way of formalities, conditions, restrictions and even penalties. Interferences by public authorities are only allowed under the strict conditions that any restriction or sanction must be ‘prescribed by law,’9 must have a ‘legitimate aim,’ and finally and most decisively, must be ‘necessary in a democratic society.’ Article 25 par. 2 of the Dutch Municipality Act (Gemeentewet) stipulates that secrecy can be imposed by the "College van Burgemeester en Wethouders" (Mayor and Aldermen), Mayor or by the Municipality Council or by a Committee thereoff, but only for the same interests named in article 10 of the Dutch Law on Publicity (Transparency) of the Government (Wet Openbaarheid van Bestuur). In this Article 10 these interests are limited. One of these interests is (article 10 par. 2, b): "The economic or financial interests of the State, the other Public Bodies, etc.", but only in case their interests outweigh the interest of giving the requested information. As applicant stated above and states below under "complaint" the method of giving information under the obligation of secrecy limites en restraints the freedom of expression, and is often not or no longer necessary or not a legitimate aim or no longer a legitimate aim. Applicants seeks thats these practices shall end. Professor Dirk Voorhoof, Universities of Gent, Belgium, and Copenhagen Denmark writes: quote "The European Court’s case law has manifestly helped to create an added value for the protection of freedom of expression, journalistic freedom, freedom of the media and public debate in the member states of the Convention. Article 10 of the Convention as interpreted by the European Court has manifestly contributed to the guarantee of a higher level of protection of freedom of expression in addition to the constitutional protection in the member states and complementary to other international treaties protecting freedom of expression and information. An important aspect that has helped to develop and enforce this right is the strict scrutiny by the European Court of interferences by national authorities in freedom of expression on matters of public interest, and especially regarding the freedom of political expression and the role of the press as “public watchdog.” unquote source: Freedom of Expression under the Eur. Human Rights System, Antwerp 2010.

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.

38. Complaint	Information about remedies used and the date of the final decision
The method of giving information tot peoples reperesentatives like Council Members is widespread en it leads to restrictions and limitation of the freedom of expression. These practices frustate the system of checks and balances. For even years later Representatives cannot act upon the knowledge and information they have, which information unnecessary or for unjust or wrong aims was given under the obligation of secrecy. In practice the secrecy only seldom is lifted by a new decision to end it. Peoples' representatives furthermore are at risk to be convicted, by which convictions for instance they cannot get certain jobs for which jobs a Certificate of Good Conduct (Verklaring van Goed Gedrag) is required.	In his pleadings before the District Court (page 5), the Court of Appeal (pages 32 and 54) and in Complaint nr. V to the Supreme Court (page 94), applicant has called upon Article 10 of the Convention. Furthermore since Article 10 of the Convention has direct effect in the Dutch legal system the Dutch Judge has to apply it. The decision of the District Court of Breda was September 12, 2011. The decision of the Court of Appeal of 's-Hertogenbosch was October 16, 2012. The final decision on domestic level was given by judgement (arrest) of the Supreme Court of he Netherlands on february 18, 2014, case file number S 13/00294. The Supreme Court dismissed applicants complaints without legal observations, according to article 81 par.1 Dutch Law on the Judicial Organization.

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.

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.

Any other comments

Do you have any other comments about your application?

46. Comments

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

1	3	0	8	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

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