



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.

### 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

										e.g. 27/09/2012
D	D	M	M	Y	Y	Y	Y	Y	Y	

4. Nationality

Czech

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)

e.g. 27/09/2012

D    D    M    M    Y    Y    Y    Y

11. Date of registration or incorporation (if any)

e.g. 27/09/2012

D    D    M    M    Y    Y    Y    Y

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

Candigliota

25. First name(s)

Zuzana

26. Nationality

Czech

27. Address

Burešova 6  
60200 Brno

28. Telephone (including international dialling code)

29. Fax

30. Email

candigliota@gmail.com

**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

2	8	0	8	2	0	1	5
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

- |  |  |
|--|--|
| <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 checked="" type="checkbox"/> CZE - Czech Republic | <input 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.

The subject of this application is the right of the minor child to access to education without unfounded discrimination (article 2 of the Protocol no. 1) and the right to personal autonomy and parental decision-making concerning health (art. 8 of the Convention).

Applicant is a minor child who, based on the decision of his parents, has not undergone all of the mandatory vaccinations as set out in the Decree no. 537/2006 Coll., on vaccination against infectious diseases (further referred to as the Decree on vaccination). Both parents of the applicant have Ph.D. degree in biology. Their decision regarding vaccination of the applicant was based on thorough consideration of variety of information concerning issue of vaccination, primarily reflecting the best interest of their child.

In compliance with their deepest beliefs they decided their son to undergo vaccination at later age and only against certain diseases, which they considered severe and where the benefits of vaccination outweigh the possible risks. The applicant is thus vaccinated against diphtheria, tetanus, pertussis, polio and haemophilus influenzae type b. On the contrary, he is not vaccinated against hepatitis B and against so called "childhood diseases" – measles, rubella and mumps.

By decision of 22 April 2010, directress of Nursery School of Námešť nad Oslavou Třebíčská refused to accept the applicant to early childhood education in public nursery school stating that he failed to meet the requirements of § 50 of the Act no. 258/2000 Coll., On protection of the public health and on amendments to some laws (hereinafter referred to as the "Public Health Protection Act"), because he did not undergo regular vaccination as set out in the Decree on vaccination.

By decision of 30 April 2010, directress of Nursery School Náměšť nad Oslavou Husova also refused to accept the applicant to early childhood education in nursery school due to failure of meeting the requirements of § 50 of the Public Health Protection Act.

Applicant appealed against both decisions to the Regional Office of the Vysočina Region. The Regional Office found no errors in directresses' conduct, thus by the decision of 20 May 2010 the appeal was dismissed and both decisions confirmed.

On 27 July 2010 applicant filed an action against the decision of the Regional Office to the Regional Court in Brno. Later, on 30 December 2010 applicant filed also an application for interim measures. By the resolution of 6 January 2011 the application for interim measures was rejected. By the judgement of 20 October 2011, ref. no. 29 A 69/2010-36 the court dismissed the action stating that the law does not give a choice not to follow the rule set in § 50 of the Public Health Protection Act and therefore directors of nursing schools are obliged not to accept children who did not undergo regular vaccination. The court also stated that in the applicant's case there was no discrimination because the fact that the applicant did not undergo required vaccination cannot be classified under any of the exhaustively enumerated grounds of discrimination covered by the Anti-Discrimination Act (Act no. 198/2009 Coll., on equal treatment and on legal means of protection against discrimination and on amendments to some laws).

**Statement of the facts (continued)**

35.

On 29 November 2011 applicant filed a cassation complaint against the judgement to the Supreme Administrative Court. By the judgement of 29 March 2013, ref. no. 8 As 20/2012 – 48 the court dismissed the complaint as being unfounded. Reasoning of the judgement was based on the proportionality test, in which the court examined whether the alleged interference with the right of the applicant is determined by the law, pursues a legitimate aim and whether it is necessary to achieve this aim. The court concluded that the interference with the applicant's rights stands the proportionality test since the obligation to undergo vaccination is prescribed by the law, the purpose of this regulation is to protect public health, which is a legitimate objective and at the same time, the applicant alleged no exceptional reasons relating to his person which would outweigh the protection of public health.

On 25 June 2013 applicant filed a constitutional complaint in which he argued, among other things, that there has been a violation of his right to an education, and since this violation has been caused by unconstitutional legislation, he proposed annulment of the provision of § 50 of the Public Health Protection Act together with § 34 paragraph 5 of the Act no. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (the Education Act), which states that "When admitting children to pre-school education the conditions stipulated by a special legal regulation must be adhered to" referring to § 50 of the Public Health Protection Act.

The petition seeking annulment of the said provision has been decided by the Plenum of the Constitutional Court (ref. no. Pl. ÚS 16/14, 27 January 2015). The Plenum concluded that § 50 of the Public Health Protection Act is not unconstitutional limitation of the right to education, since it does not interfere with the core of the right to education, it pursues a legitimate aim and chooses rational and not arbitrary means to achieve this aim. As regards § 34 of the Education Act, the petition seeking its annulment was denied, since this provision has not been applied in the decisions contested by the constitutional complaint.

The constitutional complaint itself was rejected by the resolution of the Constitutional Court of 25 March 2015, ref. no. I. ÚS 1987/13 basically on the same grounds as the abovementioned judgement of the Plenum.

Given that the applicant has exhausted all the possible domestic remedies, he is now turning to the European Court of Human Rights with his application.

**Statement of the facts (continued)**

36.

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

### 37. Article invoked

Violation of the right to education (article 2 of the Protocol no. 1)

### Explanation

Although the article 2 P-1 does not specify which levels of education it includes, applicant believes that there is no doubt that pre-school education provided in nursery schools enjoys the protection guaranteed by this article. Preschool education is the process leading to the acquisition of certain skills, attitudes and knowledge and the purpose of nursery schools is thus not only to provide "babysitting" services and to take care of the children but also to provide them with some level of primary education. After all, this conclusion is supported by the findings of the "Belgian Linguistic Case" in which the former European Commission of Human Rights stated that the right to education includes entry to nursery, primary, secondary and higher education [Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits), Judgement of 23 July 1968]. Also in case of Leyla Şahin v. Turkey the Court stated that there is nothing to suggest that article 2 P-1 does not apply to all levels of education [Application no. 44774/98, Judgement of 10 November 2005, § 134]. The applicant is aware of the fact that the right to education is not absolute, but may be subject to certain limitations. However, for these limitations to be compatible with the Convention, they need to be foreseeable for those concerned, to pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Leyla Şahin v. Turkey, § 154). In the case of the applicant these conditions have not been fulfilled. As a legitimate aim pursued by the exclusion of unvaccinated children from nursery schools, the State declares protection of public health, resp. the protection of health of the other children in the collective. However, this aim is only ostensible and conceals the real aim which is to punish parents who refuse to have their children vaccinated in accordance with the standard vaccination schedule. Bearing in mind that in all countries bordering the Czech Republic (Austria, Germany, Poland and Slovakia), no vaccination of children is required to access to preschool education in nursery schools and restrictive measures in the form of excluding a child are applied only in the event of actual occurrence of the disease, it is clear that a complete ban on access of healthy but incompletely vaccinated children to nursery schools cannot be considered legitimate nor proportionate.

(continuation of the arguments in the Annex)

Violation of the right to respect for private and family life (article 8 of the Convention)

The Court has repeatedly pointed out that concept of private life is a broad term, which embraces, inter alia, the right to personal autonomy and personal development (see Pretty v. the United Kingdom, no. 2346/02, § 61, ECHR 2002 III) and to physical and psychological integrity (see Tysiąc v. Poland, no. 5410/03, § 107, ECHR 2007 I; A, B and C v. Ireland [GC], no. 25579/05, § 214, ECHR 2010; and Haas v. Switzerland, no. 31322/07, § 50, ECHR 2011).

The applicant therefore believes that the question of autonomy in decision-making concerning health of the individual as well as health of his/her children (including the question whether get the children vaccinated, or not, and against which diseases) falls within the scope of article 8. By the indirect sanction – restraining of the access to preschool education for children who did not undergo any of the mandatory vaccination – the State interferes with the right to respect for private life and with the autonomy of making decisions about medical treatment or its scope. The State thus forces parents to let their children undergo medical treatment which is potentially risky and which may cause and also causes serious damage to health or even death and what's more – without any compensation from the State.

(continuation of the arguments in the Annex)

**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**

Violation of article 2 of the Protocol no. 1 and article 8 of the Convention

Information about remedies used and the date of the final decision

The applicant has exhausted all the effective domestic remedies:

22 April 2010 - decision of directress of Nursery School of Námešť nad Oslavou Třebíčská, ref. no. ŘMŠ/92/2010  
30 April 2010 - decision of directress of Nursery School Námešť nad Oslavou Husova, ref. no. 155/2010  
6 May 2010 - appeal  
20 May 2010 - administrative decision of the Regional Office of the Vysočina Region, ref. no. KUJI 38442/2010  
27 July 2010 - administrative action against the administrative decisions  
30 December 2010 - application for interim measures  
6 January 2011 - rejection of the application for interim measures by the Regional Court in Brno, ref. no. 29 A 69/2010-29  
20 October 2011 - judgement of the Regional Court in Brno, ref. no. 29 A 69/2010-36  
29 November 2011 - cassation complaint  
12 January 2012 - supplement of the cassation complaint  
29 March 2013 - judgement of the Supreme Administrative Court, ref. no. 8 As 20/2012 - 42  
25 June 2013 - constitutional complaint  
11 November 2013 - supplement the of the constitutional complaint  
27 January 2015 - judgment of the Plenum of the Constitutional Court, ref. no. Pl. ÚS 16/14, dismissing the petition seeking annulment of the provision of the Act  
25 March 2015 - resolution of the Constitutional Court, ref. no. ÚS 1987/13, rejecting the constitutional complaint as being clearly unjustified

The final decision at domestic level is the resolution of the Constitutional Court ref. no. ÚS 1987/13, which is dated 25 March 2015. This decision was delivered to the applicant on the same date - 25 March 2015.

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.

1. Continuation of the arguments (part F)
2. 22 April 2010 - decision of directress of Nursery School of Námešť nad Oslavou Třebíčská, ref. no. ŘMŠ/92/2010
3. 30 April 2010 - decision of directress of Nursery School Náměšť nad Oslavou Husova, ref. no. 155/2010
4. 6 May 2010 - appeal
5. 20 May 2010 - administrative decision of the Regional Office of the Vysočina Region, ref. no. KUJI 38442/2010
6. 27 July 2010 - administrative action against the administrative decisions
7. 30 December 2010 - application for interim measures
8. 6 January 2011 - rejection of the application by the Regional Court in Brno, ref. no. 29 A 69/2010-29
9. 20 October 2011 - judgement of the Regional Court in Brno, ref. no. 29 A 69/2010-36
10. 29 November 2011 - cassation complaint
11. 12 January 2012 - supplement of the cassation complaint
12. 29 March 2013 - judgement of the Supreme Administrative Court, ref. no. 8 As 20/2012 - 42
13. 25 June 2013 - constitutional complaint
14. 11 October 2013 - supplement the of the constitutional complaint
15. 27 January 2015 - judgment of the Plenum of the Constitutional Court, ref. no. Pl. ÚS 16/14
16. 25 March 2015 - resolution of the Constitutional Court, ref. no. ÚS 1987/13
17. 25 March 2015 - delivery report for the resolution of the Constitutional Court, ref. no. ÚS 1987/13
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.

**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

3		1		0		8		2		0		1		5
D	D	M	M	Y	Y	Y	Y	Y	Y	Y	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