

Witness Statement Preparation Guide

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

EHRAC

Witness Statement Preparation Guide

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Contents

| | |
|---|----|
| The role of witness statements | 5 |
| Preparing for the interview | 6 |
| During the interview | 7 |
| Drafting the statement: points to remember | 9 |
| Examples of some areas to cover in statements | 12 |

The role of witness statements

A case before the European Court of Human Rights is started when a victim or their representative files an application at the Court. This normally contains brief details about the victim, a short statement of the violations of the European Convention of Human Rights that are alleged to have been committed, and various other brief details that serve to establish that the victim is entitled to bring a case before the Court. At the time of filing an application, or in some cases at a later time, an applicant or their representative will file more complete submissions with full details of the alleged violations of the Convention. Where these details depend on evidence obtained from the victim or other persons with knowledge of what happened, then it will be necessary to present this evidence to the Court in the form of a witness statement.

Why are statements so important?

Many cases are dealt with by the Court on the papers alone, that is without an oral hearing at which the witnesses will be present to give evidence. Even when there is an oral hearing, it is unlikely that there will be the opportunity for a witness to tell the Court everything they know. As a result, the most important way to get the evidence of the victim or other persons with knowledge of what happened before the Court is through written witness statements. A claim that the Convention has been violated may be unsuccessful if insufficient detail is provided in those statements. Similarly a claim for reparations (known as “just satisfaction”) may fail in whole or in part if insufficient detail of the harm suffered by the victim and the causes of that harm are contained in the statements. Therefore it is important to prepare statements which contain as much detail as possible on all relevant matters and which address all the matters relevant to the particular allegations that are being submitted to the Court.

Preparing for the interview

Prepare a list of questions to cover with the witness before you meet with them. This will assist you to ensure that you cover all the matters you need to cover. It will also assist you to direct the witness towards providing you with the information that you need and to avoid discussing matters that may not be relevant for the preparation of their statement. Even if you do not have any background information and do not know what the witness might tell you, there are some basic questions that you will always need to ask and it will be useful to start with these: see the section entitled 'Examples of some areas to cover in statements' on page 12.

You should be careful to avoid asking leading questions when questioning a witness. Leading questions are those that suggest an answer, such as "were you beaten by a soldier?" or "the victim was badly hurt, wasn't he?" It is better for the witness to tell you their story in their own words so you should use general or open questions such as "what happened to you?", "when did that occur?", or "where was the victim at that time?"

It is often easiest to seek the information in a chronological fashion. That way you can ask about any inconsistencies as you go along. Use questions such as "what happened next?" to move the witness through the events.

During the interview

Add to your list of questions as you move through the interview to ensure you do not miss anything. If there is anything you do not understand as the witness gives their account, ask them to explain it.

Depending on the level of trauma the witness has experienced, it may be more appropriate to have a series of short interviews with the witness rather than one long one. Monitor the witness' demeanour during the interview and call a halt to the interview or have a break if the witness is becoming too distressed.

If you are having a series of interviews with the witness to complete the statement, plan what you need to cover with them before each meeting. Review the information you have already gained, identify any gaps or inconsistencies in their account and ask them about these when you next meet.

If there is a gap in time in the witness' account, ask specific questions about what occurred and in what order. For example, if the witness says that they did not go searching for their missing relative until four hours after the event, ask them to explain why this was and what was happening in the interim. If the witness gave a different account of the events to the police from the one they give you, ask them about this. Sometimes asking a question in another way will resolve inconsistencies as the inconsistency may be the result of a misunderstanding. If gaps or inconsistencies still remain, try to explore the reasons for them with the witness.

Ensure the witness is aware of the fact that they should report any intimidation or harassment they receive in the future to their lawyer.

Witnesses who are also clients

If you are interviewing a witness who is also your client, and if you have not already done so, you should ensure that:

- they are aware that even if a violation is found to have occurred, the Court may not order compensation or any other remedy, and that if the Court does order compensation, the amounts awarded are generally relatively low.
- they are aware of the likely time frame for resolution of the case.
- they have signed a costs agreement.

Drafting the statement: points to remember

- **Statements should contain clear specific details**

It is important to ensure that the information contained in the statement is detailed in a clear and concise way. As much relevant detail as possible should be included, while irrelevant details should be excluded. A statement that is longer than it needs to be will not assist the Court when it has to decide what in fact happened.

If there are gaps or inconsistencies in the witness' account, the reasons for these should be included in their statement.

- **Include facts not opinions**

In their statement, a witness should generally only give details of facts within their knowledge and not comments or opinions. There are some exceptions to this. For instance, if the witness has expert knowledge in a particular area (e.g. if they are an army officer, an engineer or a doctor), they may give their opinion on a matter within that area of knowledge. Also, if the witness' belief is important, details should be given of the belief and the reasons for it. For example, if the witness believes that their relative is dead or if they believe that the authorities have not conducted a proper investigation into an incident, this should be included in their statement.

- **Do not include hearsay if it can be avoided**

Hearsay is evidence based on the reports of others rather than something which is in the personal knowledge of a witness. For example, if the witness was not present during the attack but his mother was and she told him about the attack and he then included that information in his statement, it would be hearsay. In this example, the witness statement should be obtained from the witness' mother who actually saw the attack. In general, statements should not include hearsay if a statement can be obtained from the original source of the information.

If it is not possible to obtain a statement from the source of the information, the witness' statement should include as many of the following details as possible:

- Who provided the witness with the information?
- When and in what context was the information given?
- What was actually said by the source of the information?
- What was their demeanour at the time?
- Why it is not possible to obtain a statement from the source of the information?

- **The statement should be in the witness' own words**

Statements should, as far as possible, be in the words of the witness and they should be written as if the witness was giving that evidence in person. For instance, they should say, "I did this ...", and "I saw this ...". They should also be in words that the witness would use and not legal jargon.

The statements should also describe events from the witness' own perspective. This is important when you are preparing statements from a number of witnesses about the same event. The Court may not find it credible if a number of witnesses use the same words to describe the same event even though they had different perspectives, were in different places at the time of the event, and heard about the event at different times. Do not simply prepare one statement and copy it for each witness. Each witness should have their own statement, in their own words, which describes the events from their perspective.

- **The statement should not include legal submissions or argument**

A witness statement should only include the witness' evidence. It should not include legal submissions such as "this amounts to a violation of the Convention" or "this was a breach of Article 3". Submissions such as these will be made either in the initial application or in the additional submissions filed by the victim or their representative.

- **Ensure that the statement covers all relevant matters, especially the evidence necessary to establish a 'clear causal connection' between the violation of the Convention and the harm suffered by the victim**

If the witness is claiming that they have suffered losses as a result of a violation of the Convention, ensure that there is an explanation of how the violation caused the loss. If a 'clear causal connection' cannot be established, the claim for just satisfaction may fail.

- **Attach any corroborating or supporting evidence**

All available evidence that supports or corroborates the witness' account should be obtained and attached to the witness' statement. The evidence that is relevant will depend on the factual circumstances of each case, but common examples are:

- Photos, sketches, maps or diagrams that show the harm suffered, the persons involved, or the area where the incident or incidents took place
- Police reports or reports of any other investigations
- Medical evidence, for example doctors' reports or hospital records
- Receipts, invoices or other evidence showing the value of property that has been lost and/or the cost of replacing property that has been lost
- Any national judicial or administrative decisions concerning the incident or incidents
- Specific research, newspaper reports or other official reports relating to the events or the country's situation, if these are relevant.

Examples of some areas to cover in statements

Below are some examples of the sorts of questions you may need to ask witnesses and the areas that may need to be covered in individual statements. These are examples only and the specific questions you will need to ask will depend on the facts of the case you are working on. Not all witnesses will be able to provide details on every area. The answers should be incorporated into a statement as described above, and should not be submitted as a list of answers only.

QUESTIONS FOR ALL WITNESSES

1. The witness
 - a. Their full name;
 - b. Their date of birth;
 - c. Their gender;
 - d. Their address; and
 - e. Their occupation.

2. Facts
 - a. When (on what date and at what time of day or night) did the incident take place?
 - b. Where was the witness at that time? What was he or she doing?
 - c. Who was with the witness at the time of the incident?
Identify each person as best they can, e.g. give:
 - their name;
 - their date of birth;
 - their relationship with each person there, e.g. neighbour, brother, friend;
 - if they did not know them, any identifying features or unusual characteristics.
 - d. What did the witness see?
 - e. What did each person present say or do?
 - f. What happened as a result of the incident?
 - g. Was any damage caused or harm suffered?

- h. If so, who or what caused it? Include as much identifying information as possible about those involved including:
 - any names used;
 - the rank or ranks of those involved;
 - any uniform or vehicle markings;
 - the languages used;
 - the weapons or other instruments used;
 - any other identifying features such as facial hair, scarring etc.
- i. What was the state of health of the victim or the victim's property prior to the incident?
- j. What did the witness and the other persons present do immediately after the attack?
- k. If the victim was taken away:
 - how were they taken away?
 - by whom? What did they look like? (Also see 2(h) above.)
 - was anyone else with them?
 - where were they taken to?
 - how long were they held there for?
 - if they were transferred to another place, when did this happen and where was it?
- l. Were there any other witnesses to the events that have not previously been identified? If so, do you know how we can contact them?

ADDITIONAL QUESTIONS FOR THOSE WITNESSES WHO ARE VICTIMS

3. Domestic and other remedies
 - a. Has there been any investigation by the local or national authorities?
 - b. If a report was made to someone in authority, who was it? Where were they based? What did they say they would do?
 - c. What other legal steps has the victim taken? Which court/tribunal dealt with the claim? What was/were the outcome/s?
 - d. Were any written judgments/reports given? Does the victim have

- a copy of them? If not, can they obtain copies of them?
- e. What other possible legal steps could they have taken? If there were other legal options, why have they not pursued these?
 - f. When was the last legal step completed?
 - g. If it has been more than 6 months since the last legal step was completed, are there any continuing violations?
 - h. Has the victim made any complaint to an international authority such as the United Nations?
4. Effect of the incident on the victim
- a. What was the effect of the incident on the victim?
 - b. Did the victim suffer any physical harm? If so, provide full details of when, where and what harm was suffered.
 - c. Did the victim suffer any emotional or psychological harm including any distress? If so, provide full details of when, where and what harm was suffered.
 - d. Did the victim seek any medical or other treatment? If so, from whom? What was the nature and cost of the treatment?
 - e. What ongoing treatment has been recommended?
 - f. Does the victim still experience any physical, emotional or psychological effects as a result of the incident?
5. Losses – Land (if relevant)
- a. What area of land did the victim have available to him/her before the attack?
 - b. What was the nature and the extent of the damage to the land?
 - c. Did the victim own the land? If so, did the victim owe any money for its purchase?
 - d. Did the victim rent the land? If so, how much did the victim pay for it?
 - e. How was the land used? How much was used for crops, cattle, buildings etc.?
 - f. How much rental income, if any, did the victim receive from the land?
 - g. How much profit did the victim receive from the land from sales of surplus crops or any other source?
 - h. What is the victim's estimate of the value, in monetary terms, of

produce from the land consumed by his/her immediate family?

- i. How many/what sort of animals were kept on the land? What is the victim's estimate of their monetary value? What is the basis of that estimate?
 - j. How many/what sort of crops were growing on the land at the time of the incident? What is the victim's estimate of their monetary value? What is the basis of that estimate?
 - k. What other resources were available on the land? For example, supplies of water etc.?
 - l. How many people lived on or were supported by the land?
 - m. What losses has the victim suffered as a result of the damage to the land?
6. Losses – Buildings (if relevant)
- a. How many and what type of buildings did the victim have available to him/her?
 - b. What was the nature and the extent of the damage to those buildings?
 - c. Did the victim own the buildings? If so, was any money owing in respect of their purchase/construction?
 - d. Did the victim rent the buildings? If so, how much did the victim pay?
 - e. Did the victim receive any rent for the buildings? If so, how much?
 - f. What was the area of the buildings? How many storeys did they have?
 - g. Of what type of construction were the buildings?
 - h. What is the victim's estimate of the value of the buildings? What is the basis for this estimate?
 - i. How long has the victim owned or rented the buildings?
 - j. What losses has the victim suffered as a result of the damage to the buildings?

7. Losses – Personal property (if relevant)
 - a. What property apart from land/buildings and livestock did the victim own? E.g. furniture, tools, clothes, pictures and photographs.
 - b. What is the victim's estimate of the value of the items lost? What is the basis for this estimate?
 - c. Can these items be replaced? If so, at what cost?

8. Loss of earnings (past and future)
 - a. What income did the victim receive before the incident?
 - b. What income does the victim now receive?
 - c. Is that likely to change in the future? If so, why?
 - d. How did the incident cause this change?

9. If the victim lost their home/had their belongings destroyed, what has the victim paid since the incident and what is the victim presently paying for:
 - a. rent for current accommodation?
 - b. food/other provisions?
 - c. clothing?
 - d. utilities e.g. electricity/fuel bills?
 - e. other expenses resulting from the incident?

10. Legal costs and expenses
 - a. What has the victim paid to date by way of legal fees and other costs and expenses in domestic or other proceedings?
 - b. What documents can the victim produce to prove the amount of the fees/costs and expenses they have paid so far?

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