

# Review of the Working Methods of the European Court of Human Rights

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**The Right Honourable The Lord Woolf**

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## Review of the Working Methods of the European Court of Human Rights

This Review has been conducted on the invitation of the Secretary General of the Council of Europe and the President of the European Court of Human Rights.

The terms of reference for the Review were:

**To consider what steps can be taken by the President, judges and staff of the European Court of Human Rights to deal most effectively and efficiently with its current and projected caseload, and to make recommendations accordingly to the Secretary General of the Council of Europe and to the President of the Court.**

Together with my Review Team, I would like to extend my thanks to the Judges, lawyers and staff of the Court, who were open, welcoming and helpful, and made our task in this Review both easier and more enjoyable.

A handwritten signature in black ink, appearing to read 'Lord Woolf', with a horizontal line underneath.

**The Right Honourable The Lord Woolf**

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## **EXECUTIVE SUMMARY**

The European Court of Human Rights is faced with an enormous and ever-growing workload. 44,100 new applications were lodged last year, and the number of cases pending before the Court – now at 82,100 – is projected to rise to 250,000 by 2010. It is clear that something must be done, in the short term, if the Court is not to be overwhelmed by its own workload. The purpose of this Review is to suggest administrative steps that can be taken, without amending the Convention, to allow the Court to cope with its current and projected caseload, and pending more fundamental reform.

A number of key principles were applied in the course of this Review:

- First, it was considered that it should be the responsibility of the individual applicant to submit a properly completed application form, and provide the Court with all the information required for processing the application.
- Secondly, there should be greater information and education at national level on the jurisdiction and purpose of the Court, and on the Court's admissibility criteria.
- Thirdly, there should be increased recourse to national ombudsmen and other methods of alternative dispute resolution.
- Fourthly, the Court's priority should be to deal, without delay, with admissible cases that raise new or serious Convention issues. It therefore follows that clearly inadmissible cases and repetitive cases should be handled in a way that has the minimum impact on the Court's time and resources.
- Fifthly and finally, the management and organisation of the Registry should ensure that the Court's workload is processed as efficiently and effectively as possible.

## **Recommendations**

The Review's main recommendations are as follows:

- 1) The Court should **redefine what constitutes an application**. It should only deal with properly completed application forms which contain all the information required for the Court to process the application. This would simplify the task of the Registry, as it would not have to register and store letters from potential applicants. It would also reduce the total number of applications dealt with by the Court, and would also make the processing of applications much simpler.
- 2) **Satellite Offices of the Registry** should be established in key countries that produce high numbers of inadmissible applications. The satellite offices would provide applicants with information as to the Court's admissibility criteria, and the availability, locally, of ombudsmen and other alternative methods of resolving disputes. This could divert a significant number of cases away from the Court. Satellite offices would also be responsible for the initial processing of applications. They would then send applications, together with short summaries in either French or English, to the relevant division in Strasbourg. This would enable Strasbourg lawyers to prepare draft judgments more quickly.
- 3) The Council of Europe, the Court and its satellite offices should encourage greater use of **national Ombudsmen and other methods of Alternative Dispute Resolution**. This would divert from the Court a large number of complaints that should never have come to it in the first place, and would in many cases provide a more appropriate route for the practical resolution of grievances. The Court should also establish a specialist **'Friendly Settlement Unit'** in the Registry, to initiate and pursue proactively a greater number of friendly settlements.

- 4) The Court should deliver a greater number of **Pilot Judgments**, and then deal summarily with repetitive cases. Cases that are candidates for a pilot judgment should be given priority, and all similar cases stayed pending outcome of that case. The question of how much compensation to award successful litigants takes up a disproportionate amount of judges' time. The Court should therefore establish an 'Article 41 Unit', which would give guidance as to rates of compensation. Where possible, issues of compensation should be remitted to domestic courts for resolution.
  
- 5) A second Deputy Registrar, responsible for management of the Court's lawyers and staff, should be appointed. The '**Deputy Registrar for Management**' would be responsible for recruitment and training, career development, and the setting and oversight of targets. This would allow for more effective management of the overall functioning of the Court.
  
- 6) There should be a **Central Training Unit for lawyers**, and divisions should be restructured to allow for a more efficient division of labour between lawyers. The Court should continue to develop its case-weighting system, and should undertake a review of the target system.
  
- 7) There should be a **formal induction programme** for new judges and, where necessary, **intensive language training**. This would make it more likely that judges were able to start off 'on the right foot'.

Urgent action is needed to enable the Court to keep abreast of its workload. These recommendations do not provide the panacea but, taken together, should provide the Court with some very real assistance, and enable it to cope with its workload pending a more fundamental review of the Convention system.

## **INTRODUCTION**

### **The History of the Court and its problems**

The European Convention on Human Rights was drafted in the wake of the Second World War and the Holocaust. It was conceived as an ‘early warning system’ to prevent states from lapsing into totalitarianism. It set out the fundamental rights and freedoms that states should secure to everyone in their jurisdiction<sup>1</sup>, and provided a judicial enforcement system – the European Court of Human Rights – by which states which violated human rights could be called to account.<sup>2</sup>

The achievements of the Convention, in both establishing jurisprudence in human rights and promoting human rights and democracy across Europe, are immense. It has expanded to include and support new and developing democracies. It has contributed significantly to the continued peace and stability of the Continent. It now guarantees the right of individual petition, thereby affording the individual citizen protection from the power of the state. But now, after 50 years of the Convention system, the Court risks being drowned by its own success.

Excellence, it is sometimes said, is the enemy of the good. The European Court has always had the highest of standards, striving to give every application full consideration, and every applicant assistance and satisfaction. Now, however, when the Council of Europe comprises 46 Member States, when 800 million European citizens have the right of individual petition, and when applications to the Court range from allegations of torture to complaints about the length of proceedings, the Convention system is in crisis. The number of applications registered in Strasbourg in 1981 was 404. By 1997, this had risen to 4750.<sup>3</sup> Last year, the number of new cases lodged with the Court was 44,100 (see Chart 1 – Applications lodged per year, 1998-

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<sup>1</sup> Article 1 ECHR

<sup>2</sup> Address by Luzius Wildhaber to the Committee on Rules of Procedure and Immunities of the Parliamentary Assembly of the Council of Europe, 4 October 2005, p 1

2004).<sup>4</sup> The Court has made tremendous efforts to improve efficiency, but simply cannot keep abreast of this ever-increasing caseload. In 2004 applications were lodged at a rate of nearly 1,000 per month more than the Court can deal with<sup>5</sup>, and the backlog of cases continues to grow inexorably. 82,100 cases were pending on 1 October 2005<sup>6</sup>, and this is projected to rise to 250,000 by 2010.<sup>7</sup>

Without fundamental reform, the future for the Court is bleak. The ever-growing caseload not only threatens the long-term viability of the Court, it also visits a very real injustice on those who are genuinely in need, and who look to the Court for protection of their human rights. The backlog of cases is such that, in 2004, 4% of applications (2000 applications) had been pending for more than five years (see Chart 2). This falls well below the standards for length of proceedings prescribed by the Court itself under Article 6(1) of the Convention. It also delays the guidance that the Court should give to Member States as to how the Convention is to be applied. If “justice delayed is justice denied”, then a large proportion of the Court’s applicants – even those who are the victims of serious violations – are effectively denied the justice they seek.

### **The sources of the problem**

The exponential rise in the number of applications stems in no small part from the enlargement of the Council of Europe after 1990, when countries of the former Soviet Bloc acceded to the Convention. The Council of Europe’s Member States now range from ‘old’ contracting states, such as Britain, France and Germany, to new entrants such as Poland and the Russian Federation and, most recently, Bosnia and

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<sup>3</sup> <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court>

<sup>4</sup> ECHR #1461355, Applications pending before the Court, 1 October 2005

<sup>5</sup> Nicolas Bratza, ‘The Changing Landscape of the European Court’, speech given to Middle Temple, 5 October 2005, p3

<sup>6</sup> ECHR #1461355, Applications pending before the Court, 1 October 2005

<sup>7</sup> Memorandum by the Secretary General, 12 May 2005, based on internal and external audits.



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Herzegovina, Serbia and Montenegro. As a consequence, and as Paul Mahoney, former Registrar of the Court writes, the main task of the Council of Europe and its Court has changed from one of fine-tuning well-established and well-functioning democracies, to that of working to consolidate democracy and the rule of law in new and relatively fragile democracies.<sup>8</sup>

It is these new democracies, where the capacity of the judicial systems is still being developed, that generate the greatest number of applications. In the first nine months of 2005, more than 50% of applications pending at the Court were from just four states: The Russian Federation (17%), Turkey (13%), Romania (12%), and Poland (11%).<sup>9</sup> (See Chart 3).

It is clear, moreover, that the vast numbers of applications now coming to the Court are but ‘the tip of the iceberg’. The European Court is still relatively unknown in many emerging democracies: what is saving Strasbourg, as the Commissioner for Human Rights explained, is that people still do not know about it. The Russian Federation, for example, is still “discovering the Convention”, and as awareness of the Convention system – and of the right of individual petition – grows, so too will the Court’s caseload.<sup>10</sup>

The problems of the Court derive not only from the rapid increase in the number of Member States and the number of citizens able to apply to Strasbourg. It has also undergone a more fundamental change in its nature and purpose. In an article entitled ‘Changing ideas about the tasks of the European Court of Human Rights’, the President of the Court, Luzius Wildhaber, highlights the contrast between the Convention system’s original purpose as an early warning system, and its current role, whereby it is “increasingly thought of as being required to offer everyone the

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<sup>8</sup> ‘New Challenges for the European Court of Human Rights Resulting from the Expanding Caseload and Membership’, Paul Mahoney, p3

<sup>9</sup> Case Management Survey – Court 1/1 – 30/9/2005 (doc#1461221)

<sup>10</sup> Meeting with Alvaro Gil-Robles, Commissioner for Human Rights, 21 October 2005

individual protection of the law in the last instance.”<sup>11</sup> Although the Court continues to deal with serious human rights questions, this work is now only a fraction of its day-to-day work. 85% of incoming cases are not examined on their merits (either because they are declared inadmissible, or because they are not pursued and are therefore disposed of administratively)<sup>12</sup>, and of the admissible applications, only a fraction raise serious human rights questions.

The high percentage of inadmissible cases suggests a lack of congruence between the expectations of those who apply to the Court, and what the Court can actually deliver. There is, in short, a lack of awareness and understanding as to the Court’s real purpose and jurisdiction.

## **Reform of the Court**

The Court has been under considerable pressure to increase efficiency and productivity, and enormous energy has gone into debating and exploring possible methods of reform. Much has already been done: the Court’s IT system is sophisticated and evolving all the time, and the use of pilot judgments, as pioneered in the Polish division, is proving to be constructive in tackling repetitive cases (see Chapter 4 below).

The Court has also worked to simplify the procedure for rejecting inadmissible cases, and has reformed its working methods more generally to achieve a remarkable increase in output: the number of applications disposed of judicially has increased by 33% since last year.<sup>13</sup> Yet the Court’s workload is so large that it cannot be tackled by increased productivity alone. There are also concerns that the focus on productivity will undermine the quality of the Court’s work, and thus the credibility of the

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<sup>11</sup> ‘Changing ideas about the tasks of the European Court of Human Rights, by Luzius Wildhaber, p5.

<sup>12</sup> Note on the Warsaw Information Office Lawyer, 22 July 2005 (doc 1262324 – v3)

<sup>13</sup> Case Management Survey – Court 1/1 – 30/11/2005

Convention system itself. The President of the Court, Luzius Wildhaber, expressed exactly this concern:

“The constant pursuit of increased productivity has inevitable repercussions on the care with which applications, whether admissible or not, are scrutinised. Yet if this system is to retain the confidence of governments and citizens alike, and therefore its authority, the criterion of quality must not be absent from the debate.”<sup>14</sup>

Cutting corners to improve speed and productivity, then, is not the answer. Yet neither can the future of the Court be assured by just boosting staff and resources. The number of staff in the Registry, now at 521, has doubled over the last six years, and there is no doubt that further substantial increases in staff and resources are essential. The internal and external audits estimated that the Court needs 1280 extra staff: 660 for coping with incoming cases, and 620 for tackling the backlog.<sup>15</sup> The Registry cannot, however, grow in staff and resources indefinitely, both because there is a limit to the number of staff that the Court can absorb, and because a drastic increase in size could undermine the quality and consistency of the Court’s case-law.<sup>16</sup> As the Internal Auditor put it,

“It will not be possible endlessly to enhance the Court’s human and financial resources on account of both lack of space and budgetary constraints... the current system (a single court for 800 million Europeans) has reached its limits and must therefore evolve further and possibly fundamentally.”<sup>17</sup>

There has thus been much debate about the future of the Court, and multiple ideas for radical reform of the Court have been floated. Some of these – such as requiring the applicant to have legal representation, requiring the application to be made in either French or English, or introducing a Court fee – have been rejected by the Court on the

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<sup>14</sup> Address by Luzius Wildhaber to the Liaison Committee, 20 October 2005, p5

<sup>15</sup> Internal Auditor’s Cover Note, 18 April 2005

<sup>16</sup> Nicolas Bratza, ‘The Changing Landscape of the European Court of Human Rights’, p 16

<sup>17</sup> Audit Report on the Court’s workload and the necessary budgetary resource, 2004-2007, p5

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grounds that they restrict the right of individual petition. Other ideas, however, have been developed further, and included in Protocol 14 to the European Convention on Human Rights.

## **Protocol 14**

Protocol 14 to the European Convention is designed to amend the control system of the Convention in order to improve the efficiency of the Court, and ensure its long-term effectiveness. It was adopted in May 2004, but has yet to come into force.

At present, applications lodged in Strasbourg are allocated, via one of the Court's four sections, either to a Committee of three judges (for disposal of clearly inadmissible cases) or to a Chamber of seven judges (for consideration of borderline admissible and admissible cases). Protocol 14 amends this system.

It has three main provisions. It allows for a single judge, assisted by a non-judicial rapporteur, to reject cases where they are clearly inadmissible from the outset. This replaces the current system where inadmissibility is decided by Committees of three judges, and will increase judicial capacity. Protocol 14 also provides for Committees of three judges to give judgments in repetitive cases where the case law of the Court is already well-established (on length of proceedings cases, for example). Repetitive cases are currently heard by Chambers of seven judges, so this measure will also serve to increase efficiency and judicial capacity. Thirdly, Protocol 14 introduces a new admissibility criterion concerning cases where the applicant has not suffered a 'significant disadvantage', provided that the case has already been duly considered by a domestic tribunal, and provided that there are no general human rights reasons why the application should be examined on its merits.

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Thus the main purpose of Protocol 14 is to improve the Court's capacity to dispose of inadmissible cases, and to allow for repetitive cases to be dealt with more quickly and easily. It is, however, far from being a fix-all solution. It "treats the symptoms rather than the causes of the problem"<sup>18</sup>, and its impact on the Court's workload "is expected to be insufficient to solve the Court's problems."<sup>19</sup> There is also uncertainty as to when it will come into force. Although most Member States intend to ratify the Protocol by May 2006, the Russian Federation has yet to sign.

### **The Group of Wise Persons**

Conscious of the fact that Protocol 14 is not the magic solution to the Court's problems, a 'Group of Wise Persons' was set up by the Third Council of Europe Summit in Warsaw in May this year. With 11 Members (including myself), the Group of Wise Persons is tasked with "drawing up a comprehensive strategy to secure the long-term effectiveness of the European Convention on Human Rights and its control mechanism"<sup>20</sup>. To this end the Group, which met for the first time on 18 October, may well suggest reforms that will require amendment of the Convention.

### **This Review**

Some time is bound to elapse before changes proposed by the Group of Wise Persons can be implemented. It is clear, however, that immediate improvements to the Court system are needed urgently. It was against this background that the Secretary General of the Council of Europe and the President of the Court invited me, together with a small team of experts in law and the administration of the courts, to conduct a Review

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<sup>18</sup> Luzius Wildhaber, Address to the Liaison Committee, 20 October 2005, p5

<sup>19</sup> Deputy Secretary General, Memorandum to the Secretary General on the long term reform of the European Court of Human Rights, dated 11 April 2005, p 1

<sup>20</sup> Council of Europe Press Release, 14/09/05, 'A Group of Wise Persons to secure the long-term effectiveness of the European Court of Human Rights'.

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of the working methods of the European Court. Stephen Howarth, the UK Permanent Representative, announced this Review to the Committee of Ministers on 13 July of this year.

The objective of my Review is different to that of the Wise Persons. This Review is focussed on identifying and suggesting administrative steps that can be taken, without amending the Convention, to enable the Court to deal most effectively with its current and projected caseload before Protocol 14 comes into force, and pending more fundamental reforms that are likely to be suggested by the Group of Wise Persons. Although this Review is constrained by the limits of what is possible within the current form of the Convention, I believe that I can make recommendations which, for the short term, could make a substantial and positive difference to the way that the Court copes with both its incoming and pending cases. It is my intention that my recommendations should be capable of development by the Group of Wise Persons in their long-term recommendations.

### **The Team**

I was assisted by a team of four:

- Michael McKenzie CB QC, former Registrar of the Court of Appeal, Criminal Division, for England and Wales, contributed experience in court management. As Registrar he had responsibility for the expeditious disposal of all appeals against conviction and sentence from the Crown Court of England and Wales. The great majority of appeals require the person wishing to appeal to obtain leave to appeal from the Court of Appeal;
- Colm O’Cinneide, lecturer in human rights and equality law at University College London, advised me on the Convention;

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- Peter MacMahon, Deputy Local Government Ombudsman, provided experience of dealing with large numbers of complaints and expertise in alternative dispute resolution; and
- Laura Clarke, Senior Policy Adviser in the Human Rights Division of the Department for Constitutional Affairs, was Secretary to the Review.

### **Our Methods of Work**

My team and I studied the reports, articles and lectures that have dealt with the problems of the Court. We visited Strasbourg on 4-6 October, and again on 18-21 October. We had meetings with the Secretary General of the Council of Europe, the President of the Court, the Registrar and his Deputy, the Commissioner for Human Rights, and a great many of the judges, lawyers and staff of the Court. A list of the people consulted in the course of this Review is given at Annex 1. I also wrote to all the Judges at the Court, the staff at the Registry, and the Ambassadors to the Council of Europe to canvass their views on the possible solutions to the Court's problems. I received the greatest co-operation from everyone consulted. I held conversations with a significant number of Ambassadors, and received letters and emails in response to my request. Stephen Howarth, the UK Representative to the Council of Europe, provided us with invaluable support and assistance throughout our work on this Review. I would like to record our thanks to him and his staff.

The Court has been extensively audited and reviewed, but despite possible 'audit fatigue' we found everyone we met to be open, welcoming and helpful. We were struck throughout by the dedication of the staff, and their positive and pro-active attitude in the face of an ever-growing workload which would, in many situations, lead to low morale and apathy. The lawyers and judges of the Court are all extremely committed, and are constantly looking to innovate and improve, and try out new

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working methods. It is, in my view, to their credit that the Court continues to function in the face of its enormous and often overwhelming workload.

### **The structure of this report**

The Court and its working methods must, of course, be seen as a whole, and it is artificial to divide the Court's problems up into different sections. For clarity and ease of reference, however, I have done just that. I have identified six broad themes, and the problems associated with them, and have made recommendations where appropriate. Where I make no mention of a specific practice or procedure of the Court, it should be assumed that my team and I endorse it, and see no reason for it to change.

The Review's six main themes are addressed, in order, in this Report. They are:

- 1) The determination of what constitutes an application;
- 2) The handling of inadmissible cases;
- 3) The handling of admissible cases;
- 4) Tackling the backlog;
- 5) The management of the Registry; and
- 6) Judicial development.

The Court needs to be in a position where it can match input with output. To this end I make the following recommendations:

- The Court should take a firm view as to what constitutes an application. The Court has not, as yet, given detailed consideration to this question. For the purpose of Article 34 the Court needs to distinguish between an application to the Court and a



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mere communication to the Court that does not invoke the jurisdiction of the Court;

- The Court should take all possible action to divert cases away from the Court, and towards ombudsmen and alternative dispute resolution;
- The Court should extend its case management to take full advantage of the findings of recent pilots (in working methods and in the pilot judgment procedure); and
- It should develop a strategy for the prioritisation of cases, both for incoming and existing applications.

This Report should, of course, be read as a whole. Its conclusions and recommendations are interdependent.

### **Statement of Principles**

The principles that I have applied when making my recommendations are as follows:

- It should be the responsibility of the individual applicant to complete an application form and provide all the information required for processing the application. The Court should not engage in a matter until it has received a properly completed application form.
- There should be greater information and education at national level on the jurisdiction and purpose of the Court, and on the Court's admissibility criteria.
- There should be increased recourse to national ombudsmen and other methods of alternative dispute resolution.

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- The Court's priority should be to deal, without delay, with admissible cases that raise new or serious Convention issues. Therefore:
  - Clearly inadmissible cases should be handled in a way that has the minimum impact on the proper business of the Court.
  - Repetitive cases should be handled in a way that has the minimum impact on the proper business of the Court.
  - The Court and its Registry should devote as little time as possible to questions such as compensation, and to translation work.
- The management and organisation of the Registry should ensure that the Court's workload is processed as efficiently and effectively as possible.

## **THE NATURE OF AN APPLICATION**

### **The nature of the Court's workload**

I have given an indication of the scale of the Court's workload – 44,100 new cases lodged in 2004, and 82,100 pending cases in October 2005 – but have not yet described the nature of that workload. Although the Convention was conceived as an 'early warning system', designed to consider serious human rights violations, a huge proportion of the Court's workload is now made up of processing what are, at best, inadmissible cases. The Convention provides that every individual has the right to apply direct to the Court, and a great many people write to Strasbourg without any legal advice or assistance, and without any knowledge of the Court's conditions of admissibility. As a consequence, approximately 85% of cases arriving in Strasbourg are clearly inadmissible<sup>21</sup>, and 95% are eventually found to be inadmissible. Of the admissible cases, only a fraction raise new questions of human rights law. The remainder are repetitive or 'clone' cases. In addition, the Court deals with a considerable amount of correspondence, which I would not regard as being applications.

The Court's enormous workload and its high proportion of inadmissible cases, is due in no small part to the right of individual petition. There are 800 million citizens in Europe, each of whom has the right to apply direct to the Court. It is furthermore significant that, at present, the Court does not distinguish sufficiently between communications with the Court that do and do not constitute an application to the Court.

This is key. At present, most letters sent to the Court are counted as applications: the letter is recorded and stored in the Registry, and an application form is sent to the

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<sup>21</sup> Note on the Warsaw Information Office Lawyer, 22 July 2005 (doc 1262324 – v3)

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complainant. Rule 47 of the Rules of Court (Contents of an individual application) provides, at 47(5), that:

The date of introduction of the application shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction.<sup>22</sup>

In my view, the Court does not give sufficient consideration to whether a “first communication” sets out “even summarily the object of the applications” as required by this Rule. The way in which Rule 47(5) is applied therefore has a significant impact on the Court’s workload and its statistics.

This is not least because many applications never amount to more than ‘the first communication from the applicant’, as the applicant never submits a properly completed application form. As a consequence, a large proportion of the Court’s pending cases are no more than letters from would-be applicants. In 2004, for example, 10,452 initial “applications” were ‘disposed of administratively’ when no further correspondence had been received from the applicant after a year.<sup>23</sup>

A significant amount of time (and storage space) is taken up in registering and storing these communications and in corresponding with prospective applicants. Many applicants keep their “application” alive merely by corresponding with the Court. Others submit their application to the registry in several pieces, forcing the registry to reopen the relevant file each time an additional letter sent by the applicant arrives at the Court.<sup>24</sup>

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<sup>22</sup> European Court of Human Rights Rules of Court. Registry of the Court, Strasbourg (October 2005)

<sup>23</sup> ECHR #1461355, Applications pending before the Court, 1 October 2005

<sup>24</sup> Letter from Caroline Trautweiler, Deputy to the Permanent Representative of Switzerland to the Council of Europe, to Laura Clarke, 21 October 2005).

I recommend that the Court take a firmer view as to what qualifies as an application. I suggest that the Court should require the application to at least:

- a) be in writing; and
- b) identify in general terms the conduct alleged to constitute a breach of the Convention.

If this is not the case a communication to the Court should not be treated as an application for the purposes of the present Rule 47(5). However, I would go further than this and would amend Rule 47(5) as I set out in section 2.2.

### **The definition of an application**

Given the limits of the Court's resources and the pressures to which it is now subject, the Court should take a firmer view as to what constitutes an application. In my view only properly completed application forms should be considered as applications, and registered on the Court's system. To this end, I recommend that Rule 47(5) is amended. An appropriate amendment would be:

- i. All applications to the Court shall be made on the Court's standard application form.
- ii. The date of application to the Court shall be the date of receipt, by the Court, of a completed application form.

Under this Rule, all letters sent to the Court would receive an automatic and immediate response from the Court. The Court would send an application form, and a letter explaining that the Court can only consider a complaint on receipt of a properly completed application form. Guidance on filling out the form would be included, and would-be applicants would be warned that the Court could not enter into

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correspondence with the applicant until a properly completed application form had been received. This process would not be onerous as it would be automated, incorporating the barcode system that is now being introduced.

The letter would not be filed, and no information would need to be kept other than the name of the would-be applicant, the date of receipt of the communication, the date that the application form was dispatched, and the barcode. The Court could, if it considered that this was necessary in the interests of justice, suspend time on receipt of the initial correspondence, and pending receipt of the properly completed application form. Such an extension would be as a matter of grace.

### **The advantages of the new approach to applications**

This approach would have a significant impact on the Court's statistics of pending cases, and thus on the morale of all at the Court. At present, many applicants never follow up on their initial letter. The new rule that only properly completed application forms should be registered as applications would prevent approximately 10,500 applications a year (applications which are currently disposed of administratively) from appearing on the Court's docket, and in the Court's statistics.

The advantages of this approach are not, however, confined to the Court's statistics. The new approach would save the resources of the Registry. It would cut down on the time spent by Registry staff in registering and storing the initial letters. It would spare them from having to engage in correspondence with would-be applicants. And it would cut down the information (and paper) stored to a minimum, thereby freeing up space in the Registry.

This is not, in any way, an attack on the right of individual petition. The requirement to submit a properly completed application is in line with the procedures of many

courts. It should, in my view, be the responsibility of the applicant to know what his complaint is, and to provide all the information necessary for processing the case. The right of individual petition should not place unnecessary burdens on the Court.

### **The allocation and processing of applications**

The new rule that the Court only registers and considers applications once they have been submitted on a properly completed application form will, as I have explained, yield considerable savings. It will also make the processing of applications more effective, as the applications will, from the outset, contain all the necessary information.

It will nevertheless remain the case that a large proportion of applications received by the Court will be clearly inadmissible. Clearly inadmissible cases take up the Court's time and resources, and divert attention away from more deserving cases. The Convention provides that, even when applications do not meet the basic admissibility criteria as set out in Article 35(1), they must nevertheless be dealt with and rejected by the judges at the Court.<sup>25</sup> Any change in this procedure (such as providing that clearly inadmissible cases could be rejected by lawyers, rather than judges) would require amendment to the Convention, and goes beyond the scope of this Review.

Despite this restriction, I remain of the view that the Court would gain much from a clearer distinction between admissible and borderline admissible applications on the one hand, and clearly inadmissible applications on the other. In my view the right of individual petition should not mean that anyone can write to the Court and expect their complaint to be given full consideration, regardless of whether or not it has any substance or is admissible. It should mean that those people who have admissible applications should be able to apply direct to the Court, and have their case

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<sup>25</sup> Article 35(4) ECHR

considered within a shorter timescale. To this end, all clearly inadmissible cases should be handled in a way that has the minimum impact on the proper business of the Court. Only those cases which indicate that they may meet the admissibility criteria, or which raise an *admissibility issue*, should merit full and in-depth consideration by the judges of the Court.

Clearly inadmissible applications should be dealt with separately from more complex Committee cases and borderline admissible cases. I endorse the Court's current approach to clearly inadmissible cases, and recommend that it continue to process such cases as expeditiously as possible. Clearly inadmissible cases should not be processed by more senior lawyers, and they should be given the lowest priority when judicial capacity is stretched. The Court should also consider giving bundles of inadmissible cases to judges to work through during the vacation periods (see Chapter 6 below).

## **Summary**

I have recommended:

- 1) That an application should only be regarded as having been made once a properly completed application form has been submitted to the Court;
- 2) That clearly inadmissible cases should be treated differently to more complex Committee cases; and
- 3) That the Court continue to deal with clearly inadmissible cases as expeditiously as possible, but giving them the lowest priority when resources are stretched.

The way in which cases can be diverted away from the Court, and how both admissible and inadmissible applications are dealt with by the Court, is of the greatest importance. I consider these questions in Chapters 3 and 4 below.



## THE HANDLING OF INADMISSIBLE CASES

### Introduction

A major problem facing the Court is that of how to process (or filter out) inadmissible cases. Clearly inadmissible cases pose an enormous problem for the Court. They make up approximately 85% of cases arriving in Strasbourg, and serve to clog up the Court system, and divert time, attention and resources away from more important and deserving cases. There is widespread recognition of this problem, and the Internal Auditor's Report of 2004 suggested that the Court should, *inter alia*, "simplify processing of clearly ill-founded cases as far as possible".<sup>26</sup>

The Court has already done much to simplify the procedure for rejecting inadmissible cases. Warning letters telling applicants that their case is likely to fail have been discontinued, and applicants now receive the briefest possible explanation of why their application was rejected. Protocol 14, which will allow for one judge, rather than a Committee of three, to reject inadmissible cases, is also designed to streamline the processing of inadmissible cases.

The savings and improvements in efficiency that will be achieved by Protocol 14 and other streamlining measures should not, however, be overestimated. Although they may increase the speed with which applications are processed, they do nothing to address the huge volume of cases coming to the Court. There is also a limit to the extent to which procedures can be streamlined without compromising the quality of the service provided by the Court. As the Report of the Evaluation Group put it, "constant seeking for greater 'productivity' obviously entails the risk that [meritorious] applications will not receive sufficient... consideration to the detriment

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<sup>26</sup> Audit (2004) 08: Audit Report on The Court's Workload and the Necessary Budgetary Resources 2004-2007, paragraph 124, page 24

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of the quality of judgments.”<sup>27</sup> A decrease in the quality of judgments runs the risk that national courts may lose confidence in Strasbourg.

It is therefore clear that, if the Court is to survive and thrive in the future, something more radical needs to be done. It is not enough to streamline and speed up the processing of clearly inadmissible cases: instead they must be tackled at their source and, if possible, deflected away from the Court.

### **The need for a filter system**

The last few years have seen an increased awareness of the need to tackle the problem of inadmissible cases. Many people have argued for some form of filtering mechanism to deflect clearly inadmissible cases, and leave the Court to focus on cases of substance. The External Auditor’s Report to the Secretary General suggested that “the Court may need to streamline further the process to weed out or even discourage inadmissible cases, or deal with them more quickly”<sup>28</sup>, and the Secretary General, in his Memorandum to the Ministers’ Deputies of 12 May 2005, recommended that advice about management and working methods should be sought from people experienced in court management in Member States – “with particular reference to the possibility of a special filtering system to remove inadmissible applications more quickly than happens at present.”<sup>29</sup>

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<sup>27</sup> Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights § 39, EG Court (2001)1 Council of Europe (Sept. 27, 2001).

<sup>28</sup> Staffing and budgetary needs of the European Court of Human Rights: Report by the External Auditor to the Secretary General of the Council of Europe, p19

<sup>29</sup> Memorandum from the Secretary General to the Ministers’ Deputies, 12 May 2005, pp3-4

## **The importance of information and education**

A cursory glance at the Court's statistics show that the majority of the Court's workload derives from a minority of its Member States. 81% of the Court's 82,100 pending cases come from just 10 of the Council of Europe's 46 Member States,<sup>30</sup> and each of the high case count countries produce a substantial proportion of inadmissible cases. It would therefore seem sensible to try and stop the flow of clearly inadmissible applications at their source, and prevent them from ever coming to Strasbourg. Information and education would contribute to this. The External Auditor suggested that, "it may be necessary to explore ways to better educate potential applicants on the remit of the Court",<sup>31</sup> and it has long been felt that the better provision of information at national level could have this educative (and discouraging) effect.<sup>32</sup>

## **The Warsaw Information Office Pilot Project**

It was in this context that, in December 2003, it was agreed that a trial scheme should be set up, whereby a lawyer was employed in a Council of Europe Information Office in Warsaw in order to provide information to potential applicants on admissibility criteria. The lawyer in question, who has been in post since October 2004, works partly at the Information Office, and partly at the office of the Ombudsman. The Review visited the Warsaw Information Office on 12-13 October 2005 .

The main objectives of the office are to provide applicants with information on the requirements as to Convention admissibility, to make them aware of the domestic remedies available, and to point them towards extra-judicial avenues of recourse where appropriate. Although it is too early to draw conclusions about the long-term

<sup>30</sup> ECHR #1461355, Applications pending before the Court, 1 October 2005

<sup>31</sup> Staffing and budgetary needs of the European Court of Human Rights. Report by the External Auditor to the Secretary General of the Council of Europe, p 16.

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impact of this information office, it is clear that there is a great demand for information, and that the information provided can contribute to reducing the number of applications lodged in Strasbourg.<sup>33</sup>

The approach of the Warsaw Information Office has been endorsed by the External Auditor<sup>34</sup>, as well as at a high-level seminar in Oslo on the 'Reform of the European Human Rights System'. The delegates at the seminar concluded, *inter alia*, that, in the light of the Warsaw pilot project, further thought should be given to using information offices to help reduce the flood of inadmissible cases<sup>35</sup>.

### **Satellite Offices of the Registry**

**I suggest that the Warsaw Information Office concept should be developed and expanded to create 'Satellite Offices of the Registry'. These satellite offices would work both as regional versions of Registry, and as information offices, providing information on the Court's admissibility criteria, and on the provision, locally, of Alternative Dispute Resolution (ADR) initiatives.**

Satellite offices could be established in those countries that generate high volumes of (predominantly inadmissible) applications. I would suggest that one satellite should be established in Warsaw, building on the positive experience of the Information Office, and two or three further satellite offices established in other suitable high case count countries. As regional branches of the Registry, satellite offices would be staffed by registry lawyers, and would act as the compulsory first port of call for

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<sup>32</sup> Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights.

<sup>33</sup> Note on the Warsaw Information Office Lawyer, 22 July 2005 (doc 1262324 – v3) p3

<sup>34</sup> Staffing and budgetary needs of the European Court of Human Rights. Report by the External Auditor to the Secretary General of the Council of Europe, 2004, p16

<sup>35</sup> Reform of the European Human Rights System: Oslo Seminar, 18 October 2004; Conclusions, p 9

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potential applicants: any application form sent direct to Strasbourg would be returned, immediately, to the satellite office.

The offices would work in three different ways:

- 1) Where an intended application appeared to be admissible, or raised an *admissibility issue*, the satellite could provide the applicant with an application form, and guidance on submitting an application. The application would be registered on the Strasbourg system by the satellite lawyer, and sent direct to the relevant division along with a short report, in either French or English, explaining why it was thought to be admissible, or why it raised an admissibility issue. This approach would spare Strasbourg lawyers the initial translation, processing and analysis work, and would enable them to prepare their draft judgments more quickly.
- 2) Where a complaint was clearly inadmissible, satellite staff could provide information on the Court's admissibility criteria. They could also provide standard information on the local provision (and benefits) of domestic remedies and alternative dispute mechanisms. (See section 3.7 below). Given the fact that many applicants are not aware of the admissibility criteria, nor of the alternative remedies available to them, it is likely that this approach would prevent a substantial number of people from submitting inadmissible applications.
- 3) Where an applicant with an inadmissible case nevertheless insists on making an application to Strasbourg, the satellite lawyer could forward the application form to Strasbourg along with a note (in either French or English) highlighting why the application was thought to be inadmissible. This application could then be referred to a Committee of judges (or the single judge under Protocol 14) for formal rejection. This would spare the Registry from processing clearly inadmissible cases.

In each of these three situations the satellite office would provide savings for the Registry in, time, accommodation, and energy. It would divert many clearly inadmissible applications away from Strasbourg, and would ensure that all applications made to Strasbourg were submitted, in a properly completed application form, directly to the relevant division at the Registry. It would provide short notes summarising the reasons for inadmissibility or admissibility, and highlight the questions that required closer consideration. Lawyers at the Strasbourg Registry would be spared the early translation and processing work, and could devote far more time to admissible cases. They would also be able to prepare draft judgments more quickly.

If, as I suggest, satellite offices of the Registry were initially established in Poland and in two or three other high case count countries, they could together account for over 30% of applications lodged at the Court.<sup>36</sup> This would mean a significant cut in the number of cases processed by the Strasbourg Registry. In time, satellite offices could be extended to other countries as appropriate. I do not consider, however, that they would be needed in every state.

### **The advantages of the satellite filter system**

The advantage of these satellite offices lies not only, however, in saving the Strasbourg Registry in time and resources, and allowing Strasbourg lawyers to focus their energies on admissible cases. It would also be far cheaper to establish these offices in Member States, than it would be to increase the number of staff processing applications in Strasbourg (which is already stretched to full capacity). It would avoid the language difficulties faced by lawyers in Strasbourg, and the local offices would

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<sup>36</sup> European Court, Statistics by country, 2002-2003-2004. Evolution of Cases, Doc #1236168

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have better information on the local structures and domestic remedies in Member States.

The satellite would also have an educative effect locally, promoting awareness of human rights standards amongst the public, lawyers and local officials. The lawyer at the Information Office in Warsaw not only assists potential applicants, she also advises local judges and lawyers on the admissibility criteria and case law of Strasbourg; the satellites could build on this, and could work to disseminate Strasbourg judgments, and information about the Convention system. I consider that satellite offices should be politically attractive to national governments, as many problems could be resolved at the local level, rather than at the international level in Strasbourg. Finally, if this were to prove necessary the satellites could provide a useful base for establishing a satellite first instance Court.

### **Satellite Offices and Ombudsmen**

The Council of Europe has for many years recognised the contribution that non-judicial institutions, such as ombudsmen, can make to the protection of human rights. It has encouraged national governments to set up such institutions with appropriate powers and resources. It has also urged governments to empower these institutions to give particular consideration to human rights matters and to initiate investigations and give opinions when questions of human rights are involved.<sup>37</sup> The welcome growth in ombudsman and similar institutions among Member States over the last 15 or so years is in no small part due to the Council of Europe's efforts in this area.

In 1999 the Committee of Ministers established the office of the Council of Europe Commissioner for Human Rights. The Commissioner's terms of reference include facilitating "the activities of national ombudsmen or similar institutions in the field of

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<sup>37</sup> Recommendation No. R(85)13 of the Committee of Ministers adopted on 23 September 1985.

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human rights”. As is evident from the Commissioner’s published reports, much of his work has concentrated on supporting and developing ombudsman institutions at national and regional levels with a view to enhancing their capacity to protect the human rights of individual citizens and groups of citizens.<sup>38</sup>

I believe that there is much to be gained from building on the Council of Europe’s work in this area, and working to deflect cases away from the Court, and towards national ombudsmen (and similar bodies). A key advantage of the satellite office is that it would be well-placed to re-direct potential applicants towards alternative remedies.

There are several reasons why the Council of Europe and the Court should promote greater awareness of and access to national ombudsmen. First, it would reinforce the fact that it is the responsibility of all governments to ensure that there are adequate national arrangements for resolving human rights issues. Secondly, the ombudsman can provide effective remedies for European citizens: the flexible processes and range of outcomes that ombudsmen can provide often offer a more appropriate route for the practical resolution of grievances. Thirdly and importantly, greater use of the ombudsman could divert from the Court and its Registry a large number of complaints that should never have come to it in the first place.

Many enquires that are inadmissible under the Convention could still be considered by a national ombudsman. An enquiry that does not meet the Court’s admissibility criteria may still have merit: for example the complainant may not have resorted to any judicial remedy and his or her claim may therefore be inadmissible because domestic judicial remedies have not been exhausted. This would not normally prevent an ombudsman from looking at the matter. Or the claim may not reveal a breach of any Convention right, but an ombudsman might nevertheless be able to mediate or

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<sup>38</sup> See for example: Comm DH(2005)2 – Report on visits to the Russian Federation in 2004.



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investigate if there has been a contravention of national law, or an administrative irregularity.

If a complainant decides to proceed along an alternative route, he or she may decide to abandon a proposed application to the Court. It might also be possible, however, for the applicant to preserve his or her rights to pursue the matter in Strasbourg in the event of dissatisfaction with the outcome from the ombudsman. Consideration might be given, for example, to freezing the Court's six month time limit pending the outcome from the ombudsman.

The ombudsman is not, of course, a catch-all solution, and not all inadmissible claims coming to the satellite office will be capable of resolution by an ombudsman. Ombudsman institutions have their own eligibility criteria. It may be that the claim falls outside their general competence (it may, for example, raise an issue of national security), or there may be a procedural bar (such as non-compliance with the time limit for lodging the complaint). Most ombudsmen would also not agree or be competent to act as a quasi-appellate body in respect of the decision of a national court.

Despite this qualification, it remains the case that the staff in a satellite office are far better placed than those in Strasbourg to know the practical and legal limitations of the ombudsman and other institutions in the relevant Member State. They are also in a better position to make agreements with those institutions for regulating the referral of claims to the ombudsmen, so that complaints are only referred where appropriate. They can also engage in direct dialogue with local associations of lawyers and NGOs to persuade them of the benefits of approaching the ombudsman rather than the Court. And they could disseminate information on the most effective way of using local ombudsman institutions on the one hand, and the Court on the other. Satellite offices would, in short, be specialist bodies with local knowledge that could provide country-specific information to applicants, whilst also doing the initial processing of

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applications. They would be able to do this work more economically and effectively than is possible in the Registry, and would also avoid the language difficulties experienced in Strasbourg.

There is also great potential for the increased use of ombudsmen and alternative dispute resolution on *admissible* cases. However, for the sake of clarity and order, I will consider those in the Chapter 4 (Handling of Admissible Cases) below.

### **The location of Satellite Offices**

I recognise that ombudsman institutions in different Member States are at different stages of development. There are differences in terms of resources (staffing, information technology, accommodation, funding), differences of skills and knowledge, and differences of powers and influence. Some ombudsman institutions report more difficulties than others in obtaining compliance with their recommendations by state bodies.

To be effective, satellite offices should be located in countries where there is either an existing and effective ombudsman institution, or where there is a properly resourced development plan to increase the capacity of the existing institution(s) to handle a significant number of referrals from the satellite office within a reasonable timescale.

I therefore propose that before a satellite office is set up, an assessment should be made of the local ombudsman institution(s). The Commissioner for Human Rights might carry this out, possibly in conjunction with the European Ombudsman in appropriate cases. Following this assessment, and if necessary, a development plan should be drawn up in cooperation with the relevant ombudsman institution(s). The resources for implementing the development plan would need to be found but I

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believe that this is an area where, in some cases at least, the European Union may have at least as strong an interest as the Council of Europe.

I recognise that this approach may not yet be appropriate for some high case count countries. The satellite proposal should therefore be piloted in three or four countries (including Poland) which produce high numbers of applications, but which also have reasonable provision of ombudsman institutions.

### **3.9 A Handbook on Admissibility**

The Council of Europe and the Court should compile and maintain a 'Handbook on Admissibility', for both the Strasbourg Court, and the satellite offices of the Registry. The Handbook should set out standard information on the Court's admissibility criteria, as well as the options that applicants have in their own country for pursuing their claims through ombudsman or similar institutions.

### **3.10 Safeguards for the Satellite Office**

I am aware that the proposal to establish satellite offices in Member States may raise concerns in some quarters. Clearly, if these satellites are to be credible and effective, they would have to be genuine satellites of the Registry, and perceived as such: satellite lawyers should have the same mandate, authority and training as lawyers of the Strasbourg registry, and their work should be of the same high standard. They should be seen to be fully independent of national authorities, and this independence could be reinforced by periodic visits of single judges from Strasbourg.

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It would also be necessary to ensure that the office and its employees were protected from intimidation and pressure from domestic authorities and applicants. The best way to do this, I would suggest, would be for the satellite employees to be nationals of the Member State in question, but for the head of the office to be from another Member State. This would make the office less vulnerable to pressure, and would also serve as a salient reminder that the office is a part of the European Court – and fully independent of the national government. As a further safeguard, the European Commissioner for Human Rights could have a role in relation to the satellites.

### **3.11 The Commissioner for Human Rights**

The Commissioner could use his knowledge of the effectiveness of national ombudsmen and other human rights institutions to assist in selecting locations for the satellite offices. He could also assist in the preparation of development plans for existing institutions in those locations as appropriate, and of protocols between the satellite office and national bodies.

During the pilot period for the satellite offices, the Commissioner could target his country visits to the countries where satellites are located, and in so doing could assess the independence and impartiality of those offices and the effectiveness of their protocols with ombudsmen, other national human rights institutions and providers of mediation or conciliation. Visits by the Commissioner would also serve to reinforce the independence of the satellite offices.

There could also be a potential role for the Commissioner in providing and regularly updating country specific information about the availability of non-judicial remedies for human rights complaints for use by the Registry in communicating with individuals applying to the Court. This would be included in the ‘Handbook on Admissibility’ kept by both the Registry and the satellite offices.

### **3.12 Summary**

In summary, it is clear that something must be done to filter out inadmissible complaints, and prevent them from clogging up the Strasbourg system. Even with our new approach to applications, the workload involved in processing clearly inadmissible complaints will be considerable. It is therefore preferable to tackle them at their source – in the high case count Member States – and prevent them from ever getting to Strasbourg. I have therefore recommended:

- 1) That Satellite Offices of the Registry be set up initially in Warsaw, and in two or three other high case count Member States. Satellite offices could, in time, be extended to other suitable Member States.
- 2) That these satellites should:
  - a) provide information on the Court's admissibility criteria;
  - b) provide information on the domestic remedies and provision of alternative dispute resolution in the Member State in question; and
  - c) carry out the initial processing of applications, and provide written summaries in French or English.
- 3) That the Court and the Council of Europe should encourage greater use of ombudsmen and other methods of alternative dispute resolution.
- 4) That the Court and its satellites should compile and maintain a 'Handbook on Admissibility'.
- 5) That the Commissioner for Human Rights could play a role in selecting locations for satellite offices, and monitoring and safeguarding the independence of the satellite office.

## **THE HANDLING OF ADMISSIBLE CASES**

### **Background**

Although approximately 95% of applications channeled through the judicial process are eventually found to be inadmissible, it does not, unfortunately, follow that all admissible cases raise significant points of human rights law. In fact, the opposite is the case, and a large proportion of admissible cases are repetitive (or clone) cases, raising matters that have already been ruled on by the European Court, and which derive from systemic or structural problems in a national legal order. Thus there are, for example, huge numbers of cases based on the length of proceedings, and multiple cases about expropriation of property, and the non-execution of judgments.<sup>39</sup> These cases do not raise new issues, but in the absence of domestic remedies they continue to take up the Court's time.

A look at the workload of Division 16 of the Registry (which handles applications from Poland) gives a sense of the scale of the problem: in February 2005, the division had 4,300 cases allocated to a decision body, of which 85% (3,600) were Committee cases. Of the 700 cases identified as potentially admissible and allocated to a Chamber, the vast majority were repetitive, and only a fraction – less than 100 – raised more complex or new convention issues.<sup>40</sup> It is clear that an efficient system for the processing of repetitive cases is key to the future efficiency of the Court.

Protocol 14 will streamline the processing of repetitive cases somewhat. It allows for repetitive cases to be considered by Committees of three judges, rather than Chambers of seven judges. The Court has already adapted its working methods in anticipation of this change, and is fully prepared for the new procedure under Protocol

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<sup>39</sup> Analysis of the Statistics 2004, April 2005, p 24

<sup>40</sup> 'Test programme for processing Committee cases – for submission to the Working Party on Working Methods', Memorandum from Renata Degener to Roderick Liddell, 27 February 2005, p1

14.<sup>41</sup> However Protocol 14 will not on its own do enough to tackle the problem of repetitive cases and the strain that they put on the Court's time and resources. Conscious of this, the lawyers at the Registry have started to explore alternative means of dealing with repetitive cases, the most significant of which is the use of pilot judgments.

### **The Pilot Judgment Procedure**

The Court has traditionally worked on the basis of the details of each case, rather than on the key (and often recurrent) points of human rights law. But the case of *Broniowski v. Poland* (in which the applicant complained that an entitlement to compensation for property abandoned in the territories beyond the Bug River had not been satisfied) marked a new approach by the Court to repetitive cases.<sup>42</sup> The Court found that the State's failure to set up an effective mechanism to implement the 'right to credit' of Bug River claimants constituted a violation of the right to property (Article 1 of Protocol 1) not only for the claimant, but for a whole class of individuals. The Court made clear that general measures at national level were called for in execution of the judgment, and that those measures must take into account the many people affected and remedy the systemic defect underlying the Court's finding of a violation.

This principal judgment was designated a pilot judgment, designed to both encourage the state in question to rectify the problem at national level, and to save the Court from considering all those cases that raised the same issue. All similar applications were adjourned, "pending the implementation of the relevant general measures". Following the agreement of a friendly settlement between the parties, the case was

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<sup>41</sup> First Report of the Committee on Working Methods, 1 July 2005

<sup>42</sup> Case of *Broniowski v. Poland* (Application no. 31443/96) Judgment (Friendly Settlement), Strasbourg 28/09/2005

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struck out of the Court's list. It is expected that it will soon be possible to repatriate all repetitive cases for resolution in Poland.

This pilot judgment procedure is vital for dealing with repetitive cases. I fully endorse it, and encourage the Court to build on this success, and work to identify further situations where a systemic or structural defect in the national legal system could be remedied by recourse to a pilot judgment. Any cases in the Court's workload that are potential candidates for pilot judgments should be given priority, and all similar cases stayed pending the outcome of that case. As Judge Bratza writes, "an imaginative use of pilot judgments could do much to reduce the Court's burden".<sup>43</sup>

## **Compensation**

A further impediment to the Court's speedy processing of repetitive cases is the question of how much compensation, or just satisfaction, to award to successful litigants. Article 41 of the Convention provides that "...the Court shall, if necessary, afford just satisfaction to the injured party",<sup>44</sup> and judges often spend far more time in determining how much money to award successful litigants than they do in reaching the actual judgment. The Court works on the principle of *restitutio in integrum*, which requires an in-depth financial analysis of how much the applicant has lost, and how much compensation is due to him. This is especially complicated when it comes to cases of expropriation of property.

I would therefore like to endorse the idea of establishing a special 'Article 41 Unit' in the Registry, which would produce guidelines on the suitable amounts of compensation for certain cases.<sup>45</sup> The Registry already has most of the information

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<sup>43</sup> Nicolas Bratza, 'The Changing Landscape of the European Court', speech given to Middle Temple, 5 October 2005, p5

<sup>44</sup> Article 41 ECHR

<sup>45</sup> Address by Luzius Wildhaber to the Liaison Committee, 20 October 2005, p3



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that would be needed for these guidelines. Registry lawyers could then consult with the Article 41 unit, and include a recommended amount of compensation in the draft judgment. This would greatly assist judges, and would also ensure greater consistency in the amounts awarded.

There could also be significant merit in publishing a guide as to rates of compensation awarded by the Court. This information has not yet been made publicly available. This would enable States Parties to see the likely awards in a case, and encourage them to settle cases domestically. The table could be published on the Court's internet, and be freely available to both potential applicants and respondent states. There is a problem, however, with the comparative value of money in Council of Europe Member States (€25 goes much further in Moldova than it does in Switzerland), and this would have to be taken into account when publishing the table. The publication of this table would also complement the Court's efforts with friendly settlements. (See section 4.6 below).

Some people would prefer to go further than a 'compensation unit', and have begun to argue that assessing damages should not be one of the Court's tasks. But any change here would require an amendment to the Convention, which goes beyond the remit of this Review. However, this does not prevent the Court from agreeing with a Member State that issues of compensation should be remitted to Member States for resolution. I therefore suggest that the possibility of obtaining such agreement with individual Member States should be explored by the Court.

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## **The Council of Europe and Alternative Dispute Resolution (ADR)**

The effectiveness of this Review's recommendations will be enhanced if they are accompanied by a pro-active approach to other forms of Alternative Dispute Resolution (ADR), and also to the use of 'friendly settlements' to resolve matters before the Court.

The Committee of Ministers has for many years encouraged Member States to develop the use of ADR approaches such as mediation and conciliation to resolve disputes involving human rights issues.<sup>46</sup> In 2001, the Committee of Ministers reiterated the importance it attached to ADR at the national level, and recognised the benefits of ADR procedures either outside the judicial system, or before or during legal proceedings.<sup>47</sup>

The Committee recognised that court procedures may not always be the most appropriate means of resolving administrative procedures, and that ADR may work best in certain cases. ADR can offer simpler and more flexible procedures, a speedier and less expensive resolution, friendly settlement, expert dispute resolution, resolution of disputes according to equitable principles (not just according to strict legal rules), and greater discretion.

The Committee therefore recommended that governments promote the use of alternative means for resolving disputes between administrative authorities and private parties.

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<sup>46</sup> See for example Recommendations R (81) 7 and R (86) 12.

<sup>47</sup> Recommendation Rec (2001) 9 adopted on 5 September 2001. The Appendix to this recommendation sets out some important good practice principles

## **Friendly Settlement Proceedings**

The European Convention on Human Rights recognises the principle of ADR through its provision for friendly settlement proceedings. Essentially, these proceedings are a form of ADR available during proceedings before the Court.

Once the Court has declared an application admissible, the Convention requires the Court to:

*“place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.”<sup>48</sup>*

*The Convention also provides that friendly settlement proceedings are to be confidential <sup>49</sup> and that when a friendly settlement is effected, the case is struck off the list following a decision of the Court which is confined to a statement of facts and the solution reached.<sup>50</sup> In 2002 the Committee of Ministers stressed the value of friendly settlements, and underlined the importance of ensuring that their terms are duly fulfilled.<sup>51</sup>*

*Protocol 14 seeks to build on this resolution by inserting a new Article 39 into the Convention.<sup>52</sup> This would have two main effects. First, it would clarify that the Court may pursue the friendly settlement of cases “at any stage of the proceedings”*

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<sup>48</sup> Article 38(1)b ECHR

<sup>49</sup> Article 38(2) ECHR

<sup>50</sup> Article 39 ECHR

<sup>51</sup> Resolution RES (2002) 59 adopted by the Committee of Ministers on 18 December 2002.

<sup>52</sup> Article 15 of Protocol 14

*and not only after the Court has declared a case to be admissible. Our enquiries suggest, however, that this will not make a radical change to current practice, since the Registry do not feel unnecessarily inhibited from discussing friendly settlement proposals in advance of an admissibility declaration. Secondly the Protocol would amend the Convention to provide that a friendly settlement decision:*

*“shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.”*

*This proposed change is to be welcomed. Effective implementation of friendly settlements is essential if the procedure is to command the confidence of applicants and their advisers. It is also right that supervision of their implementation should not be the primary responsibility of the Court whose priority has to be the processing of cases to their conclusion.*

### **A Friendly Settlement Unit in the Registry**

*However near or distant the ratification of Protocol 14 may be, I suggest that consideration be given to the establishment of a small, specialist Friendly Settlement Unit within the Registry. The main functions of this unit would be:*

- 1) To provide support to Registry lawyers in appropriate cases when pursuing friendly settlement proposals;*

- 2) *To scrutinise cases pro-actively with a view to identifying a greater number of cases suitable for friendly settlement proceedings;*
- 3) *To provide a central point of contact, advice and information for applicants and their advisers (whether lawyers or NGOs) concerning friendly settlements;*
- 4) *To liaise with satellite offices, where they may exist under our proposals, with a view to promoting and bringing about friendly settlements; and*
- 5) *To maintain lists of accredited mediators in the different States who specialize in the handling of human rights issues.*

*Satellite offices, as I have suggested, may have a particular contribution to make in bringing about friendly settlements, particularly where face to face contact with the applicant or the state representative may unlock an otherwise dead locked settlement proposal. I would expect that friendly settlement discussions with government officials and applicants' advisers, will continue to be conducted by senior Registry staff travelling to the Member State concerned in some exceptional cases. An outstanding example of this happened in the case of Broniowski v Poland. But the vast majority of friendly settlements will not be of this magnitude or importance and the staff of the satellite office may be a useful locally based resource to assist the Court in increasing the number of friendly settlement outcomes. In this way, I anticipate the time spent by Registry lawyers on cases that do not need to proceed to a full judgment would be reduced.*

The Court might also consider whether it would be desirable or appropriate to strike out an application, under Article 37(1)(c) (Striking Out Applications), on the grounds that the applicant has unreasonably refused to agree to what the Court considers to be a satisfactory friendly settlement offer. In my view, and given the safeguards provided by Article 37, this would be an appropriate use of the Court's powers to strike out applications. It would give greater weight to friendly settlement negotiations, and would ensure that friendly settlement offers were only rejected for good reason.

### **Using other forms of ADR**

*The satellite offices could add value to friendly settlement initiatives. As all new applications from certain states would, under this proposal, have to be channeled through the relevant satellite office, satellite staff would be in a good position to identify cases – whether inadmissible or admissible – for mediation or conciliation in the Member State concerned. To operate effectively, however, there would need to be a resource of professional and experienced mediators and conciliators at national level to whom the satellite office could refer prospective applicants. Mediators and conciliators would therefore have to be trained so that they were able to ensure that solutions were appropriate from a human rights viewpoint, and were consistent with the protection of human rights as defined by the Convention and its protocols.*

*The development of such resources within Member States cannot be a primary responsibility of the Court and its satellites – it is principally a matter for the Council of Europe and the Member States. But ensuring that Member States,*

*particularly the high case count countries, have adequate resources to conduct impartial and equitable mediation or conciliation in human rights cases is, in my view, a high priority for action.*

### **Admissibility and Ombudsmen**

There is also scope for the use of ombudsmen in *admissible* cases – and in fact in many cases it may be the most appropriate approach. For example, the application may raise a large number of concerns, only some of which involve admissible issues. In these ‘hybrid’ cases, an ombudsman may be better able to consider the totality of the applicant’s concerns. Another instance where referral might be appropriate would be where the established practice of the Court on ‘just satisfaction’ suggests that the applicant is more likely to achieve the outcome he or she desires by applying to the ombudsman than by proceeding through the Court. (For example, some – though not all – ombudsman institutions are empowered to initiate disciplinary proceedings against individual officials.) Where applicants with admissible cases did choose to go the ombudsman route, their rights to pursue the matter through the Court could be preserved by suspending the application pending the outcome of the referral.

### **Summary**

The Court’s first priority should be the timely processing of admissible cases that raise new or serious Convention issues. With this priority in mind, it is important that the Court deals with repetitive cases as efficiently as possible. There is also scope, in my mind, for the increased use of alternative dispute resolution for admissible cases, where this is appropriate. I have recommended:

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- 1) That the Court build on the success of the *Broniowski* pilot judgment, and that it maximise use of the Pilot Judgment Procedure;
- 2) That the proposed 'Article 41 Unit' in the Registry should be established as soon as possible;
- 3) That the Court should publish guidelines as to rates of compensation;
- 4) That the Council of Europe and the Court should promote further use of alternative dispute resolution; and
- 5) That the Court should establish a specialist Friendly Settlement Unit in the Registry.



## **THE BACKLOG**

### **Introduction**

I expect that the new approach to applications, combined with the filter mechanism provided by satellite offices and ADR, will help check further growth of the backlog. However the problem of the existing backlog remains, and must be dealt with separately.

### **The nature of the backlog**

The backlog has been comprehensively analysed in the internal and external audit reports, and in the Court's own statistics. The Court had 82,100 applications pending on 1 October 2005<sup>53</sup>, and this is projected to grow by around 20% per year, and so exceed a quarter of a million cases by 2010<sup>54</sup>. Of the 82,100 pending cases, it is estimated that the core backlog (ie cases having exceeded the year time limit allowed for each stage of processing) comprises about 27,200 cases (see Chart 4, 'Pending applications')<sup>55</sup>.

However, the backlog is unlikely to be representative of the general caseload of the Court (whereby 95% of applications channeled through the judicial process are eventually declared inadmissible), because the drive for the Court to increase efficiency and maximise its disposal rate has led to a focus on processing the more straightforward work. Faced with targets to meet, lawyers may be tempted to take on Committee cases, rather than the more complex Chamber cases. It is estimated that up to 40% of the cases contained within the backlog may be Chamber, rather than

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<sup>53</sup> ECHR #1461355, Applications pending before the Court, 1 October 2005

<sup>54</sup> Memorandum by the Secretary General, 12 May 2005, based on internal and external audits.

<sup>55</sup> Pending application (total, pending before a decision body, backlog, 1998-2005

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Committee cases. And many of the outstanding Chamber cases raise serious human rights questions.

The implications of this, for the Court's efficiency and credibility, and for those for whom justice is delayed, are serious. The Internal and External Audit reports estimated that 620 extra staff would be needed to cope with the backlog,<sup>56</sup> and there has been much discussion around the creation of a 'backlog secretariat'.<sup>57</sup>

### **The backlog secretariat**

I endorse the creation of a backlog secretariat, and believe that it is key to tackling and bringing down the backlog. There should be a strict prioritisation of cases. As to Chamber cases, first priority should be given to cases that could be used for pilot judgments, and to cases that raise serious points of human rights law. The Supervising Vice President and the Judicial Deputy Registrar (see Chapters 6 and 7 below) should meet to go through the backlog, identify the high priority cases, and determine the order in which cases should be dealt with. Outstanding Chamber cases should, in my view, be dealt with chronologically. A repetitive case team should be established, working to identify and process cases for pilot judgments, so as to remove groups of repetitive cases from the Court's docket. And a group of senior lawyers should focus exclusively on the Chamber cases.

Committee cases in the backlog should, in my view, be given the lowest priority – lower, even, than clearly inadmissible applications coming into the Court. The priority is for the Court to be able to keep abreast of its incoming work (whether inadmissible or admissible applications) and if necessary this should be at the expense of Committee cases in the backlog.

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<sup>56</sup> Internal Auditor's Cover Note, 18 April 2005

<sup>57</sup> Memorandum from the Deputy Secretary General to the Secretary General on the long term reform of the European Court of Human Rights

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## **Summary**

I consider that the Court should

- 1) Establish a backlog secretariat as soon as is practicable; and
- 2) Ensure that potential pilot judgment cases, and cases that raise serious points of law, are given first priority.

## **MANAGEMENT OF THE REGISTRY**

### **Background**

Essential to the successful functioning of the Court is the way that the Registry is organised, and how cases are distributed and managed. During our time in Strasbourg we were impressed by the dedication of Registry staff and lawyers, who work extremely hard to cope with the workload, and think creatively to innovate, and change the way that the Court is run. Much has been improved over the last few years, but the system was not designed to cope with such a large inflow of cases. As with any large enterprise there are areas where established practices could be reconsidered, and adapted for the Court's new circumstances and workload.

In this Chapter I consider four main topics:

- 1) the composition, organisation and management of the Registry;
- 2) the system of case management and division of labour amongst lawyers;
- 3) the training provision for lawyers; and
- 4) IT and communications at the Court.

In some cases I suggest new approaches. In many, however, I have found it sufficient to identify good practice, and encourage the continuation and consolidation of this practice.

### **The organisation of the Registry**

The Court is currently divided into four sections. Following the recommendation of the internal auditor in 2001, a fifth section is being introduced in January 2006. The fifth section will operate in the same way as the existing sections, so the main change is that there will be nine judges in each section rather than eleven or twelve. While the

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introduction of a new section will increase judicial capacity, which is its main purpose, it is not yet clear what its impact on the Registry will be. I nevertheless endorse this initiative.

There are 20 divisions in the Registry, arranged primarily according to language and country. Each division is effectively autonomous, and operates in its own way in terms of how work is distributed, and how cases are managed and supervised. Some variations in practice are almost inevitable in a court employing lawyers from over 40 different countries. But there has until recently been no uniformly efficient system in place to ensure consistency across divisions, or to identify and spread best practice from one division to another.

Recent years have seen increased efforts in improving communication and consistency across sections and divisions. The Court's Registrars meet every Friday morning to discuss case law and statistics; there are monthly meetings of Heads of Division (organised by the Deputy Registrar) for discussion of changes in practice; Heads of Division meet regularly with Section Registrars to discuss objectives; and there are annual country meetings and further *ad hoc* meetings to discuss statistics and working methods.

In a further effort to promote a more coherent approach, the President recently established a 'case law conflict resolution mechanism' (or more simply a 'conflicts Committee'), designed to harmonise practice across sections. The Committee, composed of Section Presidents, will work with Section Registrars to identify different practices and approaches, so that Section Presidents can then consider these problems and the most appropriate way to resolve them.

I endorse these efforts, and encourage the Registry to make the best possible use of the regular meetings between Section Presidents, Registrars and Heads of Division. In a Court where there is constant pressure to meet targets and increase productivity,

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there is a danger that the focus on just ‘getting the work done’ obscures the need to analyse how it is done, to communicate across sections and divisions, and to discuss and amend working practices as necessary. There could well be a case for resurrecting the post of Jurisconsult, which has gone unfilled in recent times. The Jurisconsult would be responsible for attending the deliberations for all sections, and ensuring consistency in the Court’s case law.

### **The creation of a Deputy Registrar with Responsibility for Management**

The Court’s Registrar and his Deputy have responsibility for all aspects of the management of the Court, ranging from judicial support and advice to staff management and development. There is a lot to be gained, in my opinion, from separating out the traditional registrar function from the management function. I therefore suggest that the post of Deputy Registrar be divided into two. One, a ‘Judicial Deputy Registrar’, would have responsibility for advising and assisting Judges and managing the processing and preparation of cases for adjudication. The second, a ‘Deputy Registrar for Management’, would be a staff manager, focusing on recruitment and training, career development, and general management of lawyers and staff.

There would be several advantages to this approach: it would save the Registrar from having to consider questions of staff management and development. It would allow for a clear division of labour, and would also allow for a greater oversight, by the Registrar and his two Deputies, of the overall functioning of the Court and the way that Judges and lawyers communicate across sections and divisions.

At present, the Registrar is a Grade A7 and the Deputy Registrar A6 – the same grade as Section Registrars. I believe it would be appropriate to recognise the responsibility

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of the role of Deputy Registrar by making the post a grade A7 – and the post of Registrar ‘hors cadre’.

### **Case management and the use of lawyers**

There are 100 career lawyers in the registry, supported by less experienced ‘junior lawyers’, who do the more straightforward work on Committee cases. Although the most efficient division of labour would be for junior lawyers to deal with straightforward Committee cases, and experienced career lawyers to work on Chamber cases, this is not what always happens in practice, and career lawyers tend to work on a mixture of Committee and Chamber cases.

This is in part because lawyers work to fulfil numerical targets: they have to complete a certain number of cases each year, and consequently the temptation to work on ‘straightforward Committee cases – at the expense of Chamber cases – is great. The problems with this approach are obvious: the numerical target system does not allow for the fact that some cases are more complex and time consuming than others, and consequently it is often the more important Chamber cases that get left at the bottom of the pile. It is therefore welcome and significant that a ‘weighting system’ is being introduced, whereby each case is weighted according to its complexity, and each lawyer has to work through a certain ‘weight’ of cases each year, rather than a certain number of cases. This system is still at an early stage, and is being factored into the Court’s IT system. We encourage the continued development of this weighting system and suggest that the weighting system should take into account the importance of dealing with Chamber cases expeditiously, and also the importance of identifying any case that could be used as a pilot judgment. It could also recognise the successful promotion of friendly settlements.

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I consider that the use of targets should also be developed and increased. The current target system, whereby a year is allowed for each of the main stages, only has three targets along the way – and presupposes taking three years.<sup>58</sup> If, however, there were more detailed and specific targets (for the drafting of judgments, for example) it would be easier to track the progress being made, and to take early remedial action as necessary. I would therefore recommend that the Court undertake a Review of the target system in the Registry.

### **Division of labour amongst lawyers**

To complement the case weighting and target system, and to ensure that Chamber cases really are given priority, the working practices of lawyers within divisions should be given greater structure. As I have said, at present, senior lawyers spend too much time on Committee cases, and on supervising and training junior staff, when they should in fact be focussing their energy and expertise on Chamber cases. The Polish Division is currently running a test programme in working methods in preparation for the future judicial formations under Protocol 14. During the test programme the Division is organised into 4 teams of lawyers: 2 teams of junior lawyers, led by non-judicial rapporteurs, for Committees, one team for repetitive cases, and one team for complex Chamber cases. This, it seems, is an eminently sensible approach, allowing for straightforward cases to be processed by junior lawyers (though with supervision and quality checks from experienced lawyers), and allowing for senior lawyers to concentrate their energies on Chamber cases – and relieving them from Committee cases and correspondence.

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<sup>58</sup> The three stages are: 1) from allocation of the application to a judicial formation to the first examination of admissibility; 2) from communication of the application to the respondent Government to a decision on admissibility; 3) from a separate decision on admissibility to delivery of a judgment. (from ECHR Analysis of the Statistics 2004, p20)



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I recommend that a similar structure be spread across all divisions in Strasbourg. Each division should be made up of: one team of junior lawyers working on the straightforward and clearly inadmissible applications; one team working on borderline cases, which raise an admissibility issue and are therefore registered and put before a Committee, one team of more experienced lawyers working to process groups of repetitive cases together, and a team of permanent lawyers working on complex and challenging Chamber cases.

### **Training of lawyers**

Just as it is preferable for senior lawyers to avoid processing Committee cases, and to devote their time to Chamber cases instead, so too would it be better if the majority of senior lawyers were relieved of the responsibility for training junior lawyers. Training new lawyers is time-consuming, and diverts and distracts senior lawyers from their focus on Chamber cases. We therefore recommend that a Central Training Unit be established, run by one or two lawyers on rotation, where junior lawyers could be trained in the provisions of the Convention, the processes of the Court, and the proper way to process cases and draft judgments.<sup>59</sup> The unit could also provide advanced training for more senior lawyers, as necessary. The training unit could be overseen and administered by the new Deputy Registrar for Management and would, in my view, do much to improve the efficiency and productivity of both junior and senior Registry lawyers.

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<sup>59</sup> A central training unit was one of the suggestions put forward by Paul Ernst, Internal Auditor, in his Audit (2004) 08, p15

## **Communications and Information Technology at the Court**

A striking feature of the Court is the sophistication and effectiveness of its Information Technology infrastructure. Information Technology is critical to the Court's ability to cope with its ever-increasing case-load, and for the management of both the Court's internal functioning (case processing and document production) and its external relations and provision of information. Fortunately, the Court's case management system CMIS (Court Management Information Service) and its case-law database HUDOC are world class. CMIS registers and tracks the progress of all applications, and enable users to store and find documents easily, and to create model letters for communication with applicants. The case-weighting system is being introduced through CMIS, and the Court is currently introducing a barcoding system to enable the automatic registration of correspondence, and electronic archiving. In a further innovation, the Court is developing secure internet sites for Member States so that they can receive and deposit documents electronically.<sup>60</sup>

The Court's IT systems are constantly being upgraded and developed to ensure that it enables maximum efficiency to be derived from communications technology. I can do little more than praise the Court's system, and encourage it to continue innovating, and exploring new ideas.

### **Electronic applications**

One area worth exploring would be the development of electronic applications. A system could be developed whereby potential applicants would complete their form on the internet, and any application forms that are not properly completed would be barred from progressing further until all the relevant information had been given. This would save the Registry and its satellites from dealing with incomplete application

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<sup>60</sup> Overview of the European Court of Human Rights IT System, 1 September 2005

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forms, and would yield considerable savings in both time and postage. I am aware, however, that this approach would not be feasible for some applicants, so the Court would have simply to encourage the use of electronic applications, rather than make them a requirement for application to the Court.

### **Disseminating information on the Court's jurisprudence**

We understand that there is concern among some Member States that it is difficult to keep track of the Court's jurisprudence. While both the Court's website and its Information Note (which is now available electronically) are valuable, consideration could be given to making them more comprehensive. In particular, the Information Note could include more entries on important cases that have been communicated for observations. The website might also include information on cases that have been communicated, as well as on important admissibility decisions, and on all cases going to the Grand Chamber.

### **Summary**

I welcome and endorse the efforts that have been made to improve the management and efficiency of the Registry. In this Chapter I have attempted to build on these efforts, and have made the following recommendations:

- 1) The Court should continue its efforts to ensure coherence and consistency across divisions, and to spread best practice;
- 2) The post of Deputy Registrar should be divided into two: a 'Judicial Deputy Registrar', and a 'Deputy Registrar for Management';
- 3) The Court should continue to develop its case weighting system, prioritising complex Chamber cases and potential pilot judgments;

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- 4) There should be a Review of the target system, and more detailed and specific targets should be developed;
- 5) The working methods piloted by the Polish division should be spread across all divisions of the Court;
- 6) A Central Training Unit for lawyers should be established; and
- 7) The Court should continue to develop its excellent IT system, and consider developing electronic applications.

## **JUDICIAL DEVELOPMENT**

### **Introduction**

I have so far concentrated on measures to control the flow of cases to the Court, tackle the backlog, and ensure that work in the Court is handled as efficiently as possible. The bulk of the Court's work is done in earlier stages, by staff and lawyers in the Registry, and there is little that can be done at the judicial level to speed up these administrative stages significantly. There are nevertheless certain steps that could be taken which would, in my opinion, both improve the working environment for judges, and make their work more productive and rewarding.

### **A Vice President in a co-ordinating role**

One of these measures is the introduction of what' could be termed a 'Supervising Vice President'. A senior judge, preferably a Vice President, should be appointed to oversee the work of the whole Court, across all sections, to know what the Court's caseload is composed of, and ensure that it is dealt with in the best way possible. This Judge would work closely with Section Presidents and the Conflicts Committee, and ensure that the important Chamber cases are processed and dealt with as soon as possible, and that work is redistributed across sections where necessary. He or she could also do a review of the target system at the Court, and put together a list of agreed targets for the processing of cases at the judicial level.

The Supervising Vice President could also ensure that there is a proper system in place for judges' leave allowance. Judges are very frequently invited to attend seminars and conferences and, while the value of such participation is recognised, it seems sensible, given that the Court is under so much pressure, to introduce a more transparent system whereby leave is planned and agreed in advance. This could

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involve a 'leave chart' or chart of absences. It is important that both judges and lawyers should be able to know who is at the Court and when – and a chart of absences would ensure that this was possible. There should also be clearer guidelines as to the sort of events for which judges' participation outside Strasbourg is justified as being linked to the Court's mission (for instance judicial training schemes). In my view substitute judges should be brought in only in the most exceptional circumstances, and when judges are unavoidably absent due to illness. Ultimately judges' participation in external events must clearly take second place to their judicial work and the guidelines on leave should reflect this.

### **Vacation work for Judges**

I have suggested that inadmissible cases should be the Court's lowest priority. Yet they still need to be processed, and disposed of formally by judges. I therefore consider that much could be gained from giving judges bundles of inadmissible complaints to work through in the vacation periods. The work is straightforward, and judges could deal with substantial numbers of Committee cases in this way, thus allowing them to concentrate on Chamber cases when they are at the Court.

### **Induction courses and handbooks for new Judges**

The Supervising Vice President could also have a role to play in the induction of new judges to the Court. At present there is no required induction programme for new judges. There is only a voluntary introduction scheme, which some choose to attend and some do not. Judges arrive at the Court from a range of different backgrounds, with a range of different experience, and as a consequence often take a while to settle into the Strasbourg Court and start working effectively. A mandatory induction course should be provided for judges immediately after they arrive in Strasbourg, covering a

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broad range of subjects, from the Convention system and core principles, to the practical workings of the Court. It would make it more likely that all judges start off ‘on the right foot’, and begin life at the Court with the same basic foundations in place.

This induction course could, in my view, be complemented by a handbook or book of guidelines for judges, outlining the ‘do’s and don’ts’ of the Court, what the guideline targets are for delivering judgments, and giving information on all practicalities such as who to contact for IT difficulties, for example. It takes a while to settle into any new workplace, and a book of guidelines could be invaluable for new judges who are trying to find their feet.

### **A mentoring system for Judges**

The work of a judge is quite solitary and can, for some who have just arrived from their home country, be rather lonely. Some courts have a system of mentoring, whereby new judges are paired with more experienced ‘mentor’ judges, who can give advice and guidance on the work of the court, and more generally. The establishment of such a scheme in Strasbourg would, in my view, complement the induction programme, and help judges to settle into the work and social life of the Strasbourg judiciary.

I understand that there used to be a series of seminars at the Court, but that these were discontinued. Again, I think that a programme of seminars and events for judges – whether they are discussions of the legal systems of different countries, or on subjects such as the correct interpretation of the burden of proof, or simply social events – would do much to improve the quality of life of judges at the Court. It would also help judges to understand each other better, and work together more effectively. I

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therefore recommend that thought be given to setting up and co-ordinating a programme of such events for judges at the Court.

### **Language training for Judges**

Finally, I think it is essential to ensure not only that judges have a sound knowledge of the workings of the Convention system when they start work, but also that they have a solid working knowledge of one of the Court's two official languages. Judges arrive from all over Europe, and some have better language skills than others. As deliberation in Chamber is in either French or English, judges with insufficient knowledge of these languages – or who have a passive, rather than active, knowledge of French and English – may be unable to contribute fully to deliberations, and thus to the final judgment.

I believe that the Court should provide language training, where necessary, for new judges. When new judges are appointed, their language proficiency should be assessed, and supplemented, if necessary, with intensive training. This would of course be expensive, but if a judge is to make a proper contribution to the work of the Court, it is vital that his or her language skills are at an appropriate level.

### **Summary**

The recommendations in this Chapter will not yield significant gains in productivity. I nevertheless consider that they could be of great benefit to the Court and its judiciary, both in terms of working methods and the general working environment. I have recommended that:



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- 1) There should be a 'Supervising Vice President', responsible for overseeing the work of the Court, and ensuring that it is dealt with consistently across sections;
- 2) There should be a proper and transparent system in place for judges taking leave;
- 3) Judges should be asked to dispose of bundles of inadmissible cases during vacation periods;
- 4) There should be a formal induction programme for judges; and
- 5) The Court should provide intensive language training for new judges, where needed.

## **IMPLEMENTATION OF JUDGMENTS**

### **The importance of implementing the Court's judgments**

Although this does not fall within the control of the Court, or indeed within the remit of this Review, I would like, for the sake of completeness, to draw attention to the critical importance of the implementation of the Court's judgments. If the Court's long-term viability is to be ensured, it is essential that Member States take appropriate measures to implement the Court's judgments and prevent repeat violations. The increased use of pilot judgments, which I recommend in this Review, adds to the importance of Member States taking action to avoid repetitive cases from arising after a pilot judgment has been delivered.

Both the Court and Member States are adversely affected by the non-implementation of the Court's judgments. The Court suffers from an (unnecessary) increase in its workload, whilst Member States are faced with the expense and inconvenience that arises domestically from repetitive cases. It is my hope that, as the use of the pilot judgment procedure increases, so too will the focus on the rapid and effective implementation of judgments.

## RECOMMENDATIONS AND CONCLUSIONS

### Recommendations

#### Applying to the Court

- The Court should amend Rule 47(5) to **clarify what constitutes an application.**
- The amended Rule should make clear that there is no application until the receipt by the Court of a **completed application form.**
- The Court should continue to deal with **clearly inadmissible cases** as expeditiously as possible. But it should give them the lowest priority.

#### Inadmissible Cases

- **Satellite Offices of the Registry** should be established in key high case count countries. Satellite Offices would provide applicants with information, and carry out the initial processing of applications so that those that proceed to Strasbourg are ready for allocation.
- The Court and its satellite offices should encourage greater use of **national Ombudsmen** and other methods of **Alternative Dispute Resolution.**
- The **Commissioner for Human Rights** should play a role in selecting locations for satellite offices, and monitoring and safeguarding the independence of the satellite office.
- A **Handbook on Admissibility** should be compiled and maintained.

### Admissible Cases

- I recommend that the Court build on the success of the *Broniowski* pilot judgment, and that it maximise use of the **Pilot Judgment Procedure**.
- I endorse the creation of an '**Article 41 Unit**' in the Registry. It should be established as soon as possible, both to assist judges, and ensure greater consistency in compensation.
- The Court should also **publish guidelines as to rates of compensation**. This will assist and encourage Parties to resolve cases domestically.
- I recommend that the Council of Europe and the Court should promote further use of **alternative dispute resolution** (such as mediation, conciliation, friendly settlement and dispute resolution).
- I recommend that the Court establish a specialist **Friendly Settlement Unit** in the Registry, to support Registry lawyers when pursuing friendly settlements.

### The Backlog

- I endorse the establishment of a **Backlog Secretariat**.
- I recommend that there is a strict **prioritisation of cases**, with first priority being given to cases that could be used for pilot judgments, and to Chamber cases that raise serious points of human rights law.

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### Management of the Registry

- The Court should continue its efforts to **ensure coherence and consistency across divisions and sections**, and to spread best practice.
- The post of Deputy Registrar should be divided into two: there should be a **‘Judicial Deputy Registrar’**, and a **‘Deputy Registrar for Management’**.
- The Court should continue to develop its **case weighting system**, taking into account the importance of prioritising Chamber cases and potential pilot judgments.
- There should be a **Review of the target system**, and more detailed and specific targets should be developed.
- I endorse the **new working methods** piloted by the Polish division, and recommend that all divisions in the Court be restructured in a similar way, allowing for a clearer and more efficient division of labour amongst lawyers.
- I recommend that a **Central Training Unit** for lawyers be established.
- The Court continue to develop its excellent IT system, and should consider developing **electronic applications**.

### Judicial Development

- There should be a **‘Supervising Vice President’**, responsible for overseeing the work of the Court, and ensuring that it is dealt with consistently across sections.

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- The Supervising Vice President should ensure that there is a proper and transparent system in place for **judges taking leave**.
- While the present backlog continues judges should be asked **to dispose of bundles of inadmissible cases during vacation periods**.
- A **formal induction programme for judges (including mentoring)**, and a formal book of guidelines for judges should be provided.
- The Court should also provide **intensive language training** for new judges, where needed.

## **Conclusions**

I do not suggest that these recommendations, if adopted, will solve the Court's problems. Nor will they transform the situation overnight. However, I do believe they could achieve two important goals. First, they could enable the Court to stem the tide until a fundamental review of the Convention can take place. Second, they will provide a test bed for one way of achieving a long-term solution, that is having regional centres providing courts of first instance and allowing the existing Court to play a different role. A role whereby it ceases to be accessible as of right, but can instead control and select its own caseload.

There are other less radical reforms that I could have proposed, such as imposition of a requirement that applicants should use qualified lawyers for making applications. But this is not a solution that I would endorse at this stage in the development of the newer Member States.

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As to financial resourcing, if the reforms I have identified are adopted, I do urge that they be supported by the necessary finance. The Court must be given a lifeline if it is not to be drowned by its own success. It would be tragic if an institution which has played such a critical role in promoting and protecting human rights in each Member State were not rescued. The citizens of Europe are entitled to continue to enjoy its protection.

## **Annex 1: People Consulted in the course of the Review**

### **At the Council of Europe:**

Terry Davis, Secretary General of the Council of Europe  
Maud Buquicchio, Deputy Secretary General of the Council of Europe  
Alvaro Gil-Robles, European Commissioner for Human Rights  
Paul Ernst, Director of Internal Audit

### **Judges at the European Court of Human Rights:**

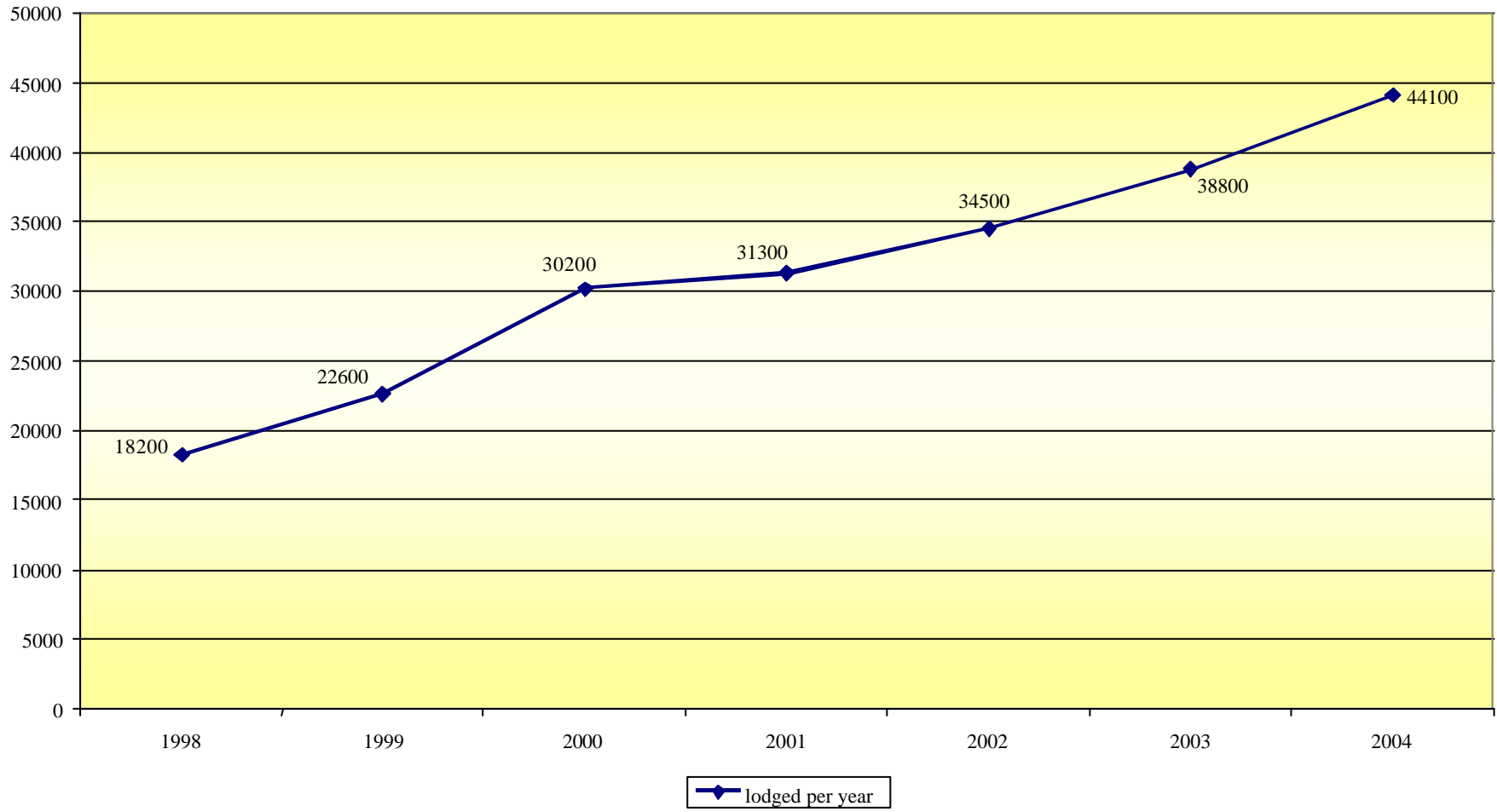
Judge Luzius Wildhaber, President of the Court  
Judge Christos Rozakis, Vice-President  
Judge Jean-Paul Costa, Vice-President  
Judge Sir Nicolas Bratza, Section President  
Judge Boštjan Zupancic, Section President  
Judge Françoise Tulkens  
Judge Peer Lorenzen  
Judge John Hedigan  
Judge Matti Pellonpää  
Judge András Baka  
Judge Antonella Mularoni  
Judge Lech Garlicki  
Judge Elisabet Fura-Sandström  
Judge Dean Spielmann  
Judge Renate Jaeger

### **Staff at the European Court of Human Rights:**

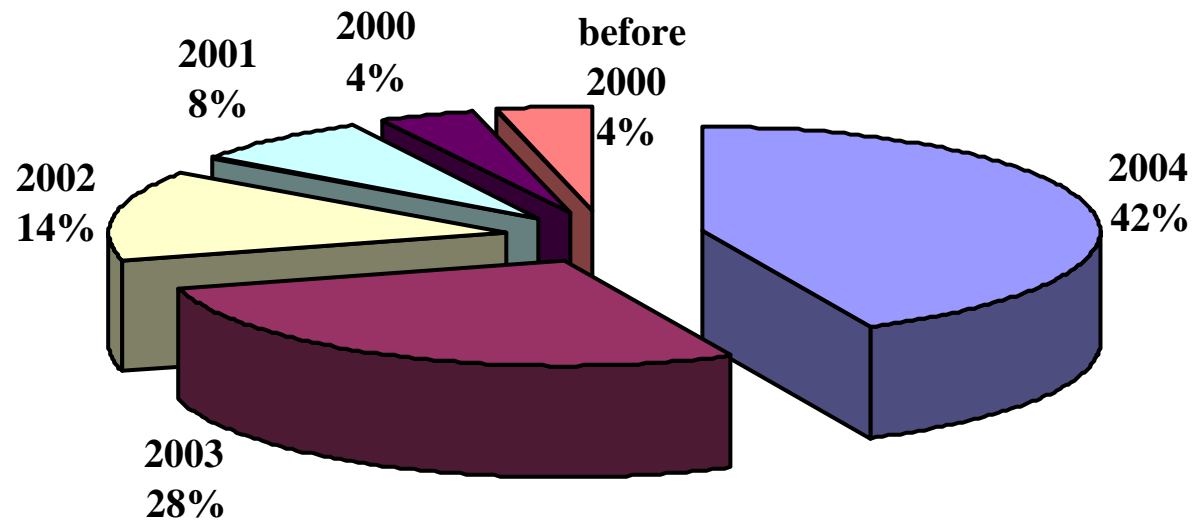
Paul Mahoney, Former Registrar of the Court  
Erik Fribergh, Deputy Registrar (now Registrar)  
Sally Dollé, Section Registrar  
Michael O'Boyle, Section Registrar  
Vincent Berger, Section Registrar  
Søren Nielsen, Section Registrar  
Lawrence Early, Deputy to the Registrar  
Claudia Westerdiek, Deputy to the Registrar  
Roderick Liddell, Deputy to the Registrar  
Stephen Phillips, Head of Division dealing with Russian cases  
John Hunter, Head of IT Division  
Renata Degener, Head of Division dealing with Polish cases  
Clare Ovey, senior lawyer with responsibility for training  
Natasha Brady, non-judicial rapporteur in Division dealing with Russian cases  
Hanna Machinska, Director of the Warsaw Information Office  
Katarzyna Lakoma, lawyer at the Warsaw Information Office.



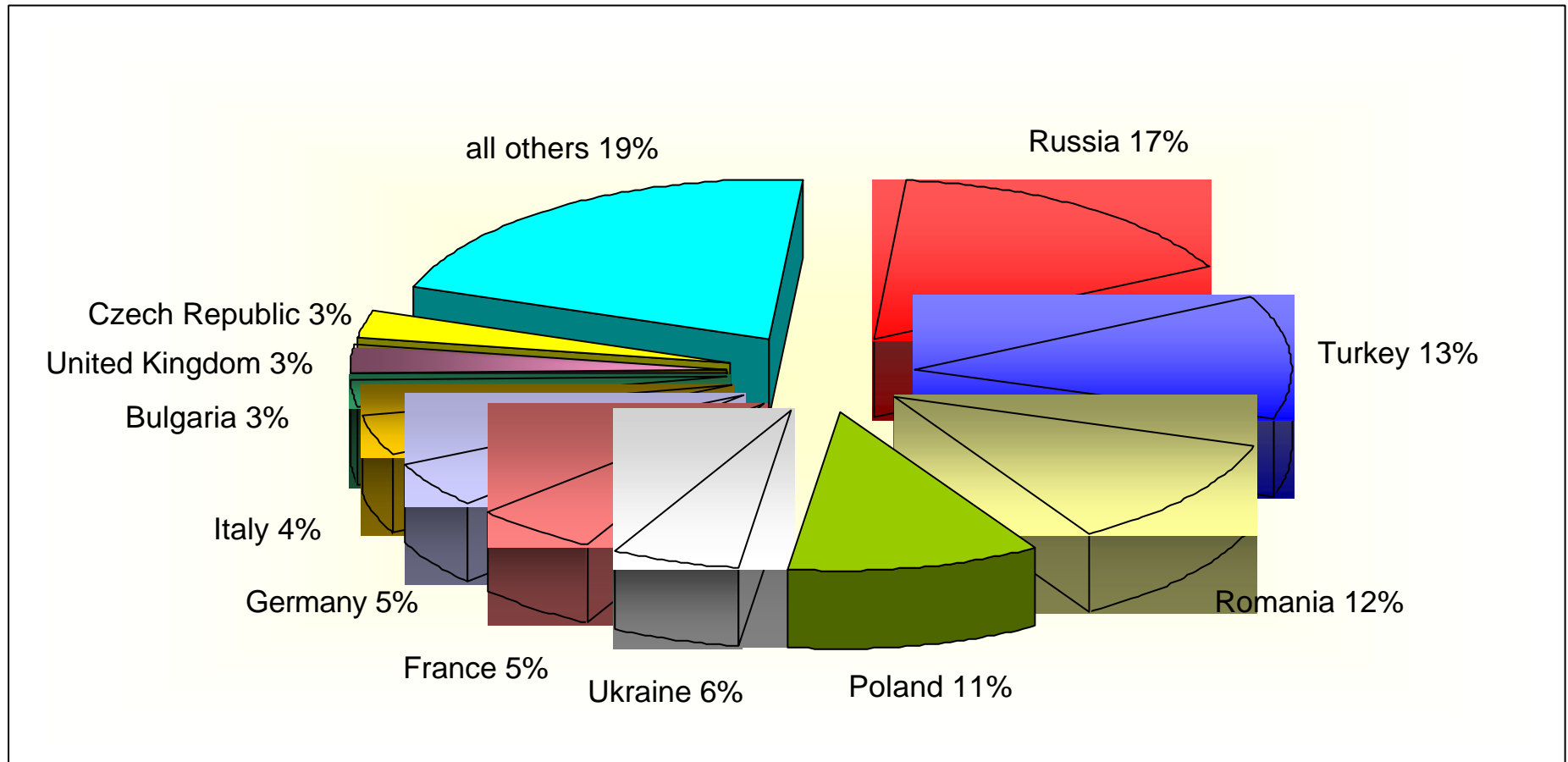
Applications lodged per year (1998-2004)



**Year of lodging of applications pending before a decision body**



Pending Cases by Member State  
01/10/2005



Total number of pending cases: 82,100

**Pending applications  
(total, pending before a decision body, backlog)**

