Appendix III

DRAFT CDDH Report on filtering of applications and treatment of repetitive applications

The present report contains the CDDH's specific proposals, with different options, for a filtering mechanism within the European Court of Human Rights and consideration of whether repetitive cases could be handled by judges responsible for filtering. It thus responds to the Ad hoc terms of reference given to the CDDH by the Ministers' Deputies following the Interlaken and Izmir Conferences,[1] read in the light of the Interlaken Declaration.

The main options for a new filtering mechanism proposed are:

(i) Filtering by certain experienced Registry lawyers, who would be appointed as "filtering officials," under the authority of the President of the Court, to discharge the competence currently held by single judges;

(ii) Filtering by a new category of judge, possessing the qualifications required for appointment to judicial office and subject to independence and impartiality requirements;

(iii) Filtering of cases inadmissible under Article 35(1) and (2) by specifically designated Registry lawyers and of cases inadmissible under Article 35(3) by any new category of judge, of whatever sort.

Several experts considered that it was necessary to continue evaluating the effects of the Court's implementation of Protocol No. 14 before a decision on whether to establish a new filtering mechanism can be taken

As regards repetitive cases, the CDDH has taken this question more widely, asking whether any new filtering mechanism or an additional mechanism increasing the Court's decision-making capacity could also deal with repetitive cases. It has been excluded that Registry lawyers could give judgment in such cases, although it might be possible for any new category of judge to do so.

The report notes that the Court is confronted with a very lengthy backlog also of admissible Chamber cases. It therefore includes a proposal that would make it possible to increase the Court's general decision-making capacity by recruiting a pool of temporary judges, who would have to satisfy the same criteria for office as the regular judges and would be competent to discharge most of the functions of regular judges, other than sitting on the Grand Chamber or Plenary Court.

The CDDH nevertheless notes that none of the above options could increase the Court's decision-making capacity without an increase in the size of the Registry, which is responsible for triage of applications and preparation of draft decisions.

Finally, the CDDH notes that the Court has pointed out on several occasions that its case-processing capacity could be substantially (but not sufficiently) increased even before the adoption of a new mechanism, by increasing the staff of the Registry. The question of the extent to which an increase in the staff of the Registry would contribute to alleviating the problem should be explored.

[1] See docs CM/Del/Dec(2010)1079/1.6 and CM/Del/Dec(2011)1114/1.5 respectively.

I. Interlaken Declaration and the CDDH's ad hoc terms of reference

1. Paragraph 6.c.ii. of the Interlaken Declaration "recommends, with regard to filtering mechanisms, […] to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i." (emphasis added).[2] Furthermore, paragraph 7.c.i. of the Interlaken Declaration "calls upon the Committee of Ministers to consider whether repetitive cases could be handled by judges responsible for filtering…"

2. The Steering Committee for Human Rights subsequently received terms of reference requiring it to "elaborate specific proposals for measures requiring amendment of the Convention, including proposals, with different options, for a filtering mechanism within the European Court of Human Rights […].This part of the terms of reference shall be executed through the presentation of a final report to the Committee of Ministers by 15 April 2012; an interim activity report shall be submitted by 15 April 2011"[3] (emphasis added). These terms of reference were subsequently reiterated, following the Izmir Conference, and the deadline for submission of results brought forward to 31 March 2012.

II. What is filtering and why is it important?

3. Filtering is the task of finally disposing of applications that are clearly inadmissible, thereby eliminating them from the Court's docket and leaving only those applications that raise substantive issues. Filtering is not to be confused with the task of triage, which is currently performed by the Registry and consists of an initial screening of applications and their provisional assignment to the different judicial formations (chamber, committee, single judge).

4. Filtering is an unavoidable part of the Court's work. It must be done in any system. Filtering is important because all applicants, also those whose applications are clearly inadmissible, have a legitimate expectation to have their case decided by the Court within a reasonable time. To receive a decision from the Court is an important element of the right of individual petition. For a large and growing number of applicants, however, this expectation is not met, and the right of individual application is thus being undermined. As noted with deep concern in the Interlaken Declaration, the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow, and this situation causes damage to the effectiveness and credibility of the Convention and its control mechanism.[4]

5. New ways of filtering cannot, however, reduce the number of applications the Court has to deal with. The aim is to increase the Court's case-processing capacity, so as to allow it to deal more efficiently with its case-load. Bearing in mind that inadmissible applications represent around 90 % of applications decided by the Court and around 65 % of pending applications,[5] increasing the Court's capacity to deal with these cases is necessary in order to reach two of the three aims set out in the Interlaken Declaration, i.e. to achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications and to enable the Court to reduce the backlog of cases and to

[2] Sub-paragraph i. states that "[The Conference … recommends, with regard to filtering mechanisms,] to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering."
[3] See doc. CDDH(2010)001.
[4] Cf. paras. 7 and 8 in the preamble.
[5] The former figure derives from the Court's statistics for recent years; the latter is the proportion of pending cases that have been provisionally identified by the Registry as inadmissible.

adjudicate new cases within a reasonable time.[6] More efficient processing of clearly inadmissible applications should also allow the Court to deal more efficiently with the substantive issues before it.

6. For further information on how filtering is done in the present framework, see the earlier DH-GDR report at Appendix IV to the CDDH Interim Activity Report on measures requiring amendment of the Convention.[7]

III. Do we need or want a new filtering mechanism going beyond Protocol No. 14?

7. At the end of 2005 – the first year for which relevant figures are publicly available – **89,900** applications were pending, 45,500 applications having been lodged during that year and 28,565 decisions taken, of which *27,613* were to declare the application inadmissible or strike it out. Five years later, at the end of 2010 – the latest full year for which figures are available – **139,650** applications were pending before a judicial formation, 61,300 applications having been allocated to a judicial formation during that year and 41,183 decisions taken, *38,576* of which were to declare the application inadmissible or to strike it out.[8]

8. It can also be noted that the Registry has calculated that, with 80 assistant lawyers preparing decisions in approximately 400 *prima facie* clearly inadmissible, single judge (SJ) cases each per year, and with 20 SJ who devote approximately 25 % of their time to work on SJ cases (or with 5 SJ who work almost full-time on SJ cases, as has been considered a possibility), the Court would be able to produce some 32,000 SJ decisions. This implies that should all 47 judges work on clearly inadmissible applications, they could achieve the same output by each devoting less than 11% of their working time to them.[9] It should be set against the fact that, at the end of September 2011, 96,700 cases were pending before the SJ formation (an increase of over 9% over the previous 12 months).[10] Moreover, at the end of September 2011, 51,700 new applications had thus far been allocated to a judicial formation in 2011. It is thus evident that there will be more than 32,000 incoming clearly inadmissible cases in any one year. With the current allocation of resources, even without the constant influx of new cases, it would take three years for the Court to clear the back-log.

9. Furthermore, one can conclude that should all the judges work only on single judge cases, it would take them roughly three and half months to clear the backlog of around 88,400 applications; whereas it would take them seven years for the 51,250 and Chamber and committee cases.[11] . If one considers the length of the proceedings faced by an application lodged with the Court, the average clearly inadmissible application is dealt with within three

[6] Cf. para. 9, sub-paras. i and ii in the preamble of the Interlaken Declaration.
[7] See doc. CDDH(2011)R72 Addendum I.
[8] See the Court's Analysis of statistics 2010, available on its website. It should be noted that the basis on which the Court publishes various statistics has changed over time. In particular, the previously used figures for "applications pending before a judicial formation" and "applications allocated to a judicial formation" would be slightly lower than those currently given for "applications pending" and "applications lodged," respectively, for any given year. The above data are thus given for illustrative purposes only.
[9] See doc. DH-GDR(2010)017, report of the 4th DH-GDR meeting (15-17 September 2011), Appendix III.
[10] The figure for pending cases is taken from the latest information available on the Court's web-site.
[11] These figures are taken from the Court's Annual Report 2010, p. 152. According to these figures, it takes a judge on average 41 times longer to decide a Chamber or committee case than a single judge case. In 2010, there were 4.89 single judge cases decided for every one Chamber or committee case, i.e. the ratio between the 34,189 single judge cases and the 6,994 Chamber and committee cases. The committees' changing role during 2010 was taken into account in the calculation and the rough figures modified accordingly.

years, whereas the average Chamber or committee case will not be dealt with for seven years and four months.[12]

10. These figures help explain the Court's position that "the current situation is manifestly unsustainable" and its view that if there is one thing that can be said now about the effects of the changes brought about by Protocol No. 14, they will not be enough: further measures are necessary.[13] This is the case even though the Court itself has estimated that Protocol No. 14, in particular the single-judge procedure, could increase the efficiency of the Court by 20-25%.[14] The Secretary General of the Council of Europe has also stated that "Protocol 14 is of course very important but not at all sufficient, additional measures have to be taken in Interlaken and the ideas that Interlaken present must be followed up."[15] Even at the time of adoption of Protocol No. 14, it was foreseen that the measures it contained, although necessary, would not be sufficient in the face of the Court's increasing case-load. Indeed, since Protocol No. 14 was adopted, the Court's case-load has not only continued to increase but has done so ever faster.

11. A new filtering mechanism would enhance the Court's capability to deal efficiently with clearly inadmissible applications and thus enable equilibrium between the rates of receipt and disposal of such applications to be achieved for all member States and the backlog to be reduced, allowing the regular judges to devote their attention to admissible cases. It has been suggested that freeing regular judges from work on inadmissible applications would make the post of judge more attractive, with a beneficial effect on the quality of candidates. Bearing in mind that judicial time spent as single judges on inadmissibility decisions is time taken away from cases meriting a more detailed examination – even though the Court is also confronted with an overload of these – allowing judges more time for work on judgments could reduce the risk of divergent case-law, improving the quality of their decisions and judgments.

12. Several experts considered that it was necessary to continue evaluating the effects of the Court's implementation of Protocol No. 14 before a decision on whether to establish a new filtering mechanism can be taken, referring to paragraph 6.b. of the Interlaken Declaration, which "stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible." Some have suggested that the main limitation on the Court's production of inadmissibility decisions lies not with judicial capacity but rather with that of the Registry: strengthening the Registry would thus contribute to more effective and efficient filtering; in order to increase the Court's case-processing capacity, the Registry's preparatory capacity needs to be strengthened. Furthermore, it was noted that it may be easier – assuming an increase in budgetary allocations for the Court would be easier to achieve than amendment of the Convention – to increase the number of Registry lawyers than the number of judges working on filtering. Others, however, while fully agreeing that the triage and preparatory capacity of the Registry must be increased in order to increase the Court's case-processing capacity, do not agree that simply increasing the number of Registry lawyers will suffice to allow the Court to deal with its work-load. In their opinion, the Court's decision-making capacity also needs to be increased, as there is a limit to how many cases 47 judges can deal with while maintaining the quality and consistency of the Court's case-law.

[12] 2010 figures.
[13] See e.g. the Registry's presentation to the 4th DH-GDR meeting (doc DH-GDR(2010)017, Appendix III and the Registrar's comments at the CL-CEDH "liaison committee" meeting on 14/10/10.
[14] See the Explanatory Report to Protocol No. 14bis, para. 3, which refers to the statement of the President of the Court to the meeting of the Committee of Ministers' Liaison Committee with the European Court of Human Rights (CL-CEDH) on 14 October 2008.
[15] See the Secretary General's speech on "New Realities: Reform of the Council of Europe," delivered to the Ministers' Deputies at their meeting on 20 January 2010. The former Court President spoke to identical effect during his recent exchange of views with the CDDH: see doc. CDDH(2010)013.

13. Given that the CDDH's ad hoc terms of reference require it to elaborate specific proposals at this stage (see below), many of those experts who remained unpersuaded of the need for a new filtering mechanism were nevertheless prepared to proceed on the basis that proposals be elaborated with the proviso that the time is not yet ripe to take final decisions on a new filtering mechanism.

IV. Filtering by whom – different models

14. During the course of the DH-GDR's work, various models have been proposed to deal with the problem of filtering. It can be noted from the outset that all of the options proposed are intended to present the following basic advantages:

- They would enhance the Court's decision-making capacity.
- The existing, "regular" judges would be able to concentrate on more complex and substantive cases, notably *prima facie* admissible applications and development of the case-law.
- Each would allow some degree of flexibility in responding to the Court's needs at a given moment in time.

15. Perhaps the most important difference concerns the question of who would be responsible for filtering. The main options, including variants, are the following.

a. The Registry

16. Several states have suggested that experienced Registry lawyers should be authorised to take final decisions with regard to clearly inadmissible cases. More specifically, the existing non-judicial rapporteurs (NJRs) would be given the competence now held by single judges, that is to "*declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination. The decision shall be final. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further consideration"* (cf. Article 27). According to the explanatory report to Protocol No. 14, *"(t)his means that the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset.*"[16]

17. The President of the Court would appoint such "filtering officials" in the same way that non-judicial rapporteurs are appointed today. The role would usually be short-term and not necessarily full-time. They would function under the authority of the President of the Court and form part of the Registry, as set out in Article 24(2) of the Convention with regard to (non-judicial) rapporteurs. It would seem appropriate that these "filtering officials", when sitting as such, should not examine any application against his or her home state,[17] as is the case currently for single judges (see Article 26(3)ECHR).

18. The following advantages to this system have been suggested:

(i) Experienced Registry lawyers are impartial and independent of the parties and have the qualifications and experience necessary to take final decisions in clearly inadmissible cases, including a thorough knowledge of the Court's case-law, since they already oversee the preparation of inadmissibility decisions for submission to a single judge.

(ii) Registry lawyers would be expected to be entirely operational straight away, which would not be the case for other options.

[16] Cf. para. 67 of the Explanatory report.
[17] Which state is to be considered the home state, would have to be defined.

(iii) Removing the extra decision-making level (the single judge) would reduce time and resources spent on clearly inadmissible cases. Single judges disagree with the non-judicial rapporteurs in less than 1 % of the cases.[18]
(iv) There would not be any additional cost involved in the new filtering mechanism, for constant output (unless it is considered that "filtering officials" should be paid more than non-judicial rapporteurs). However, regardless of the filtering mechanism chosen, in order to increase the Court's overall output, the Court's Registry (i.e. the Court's preparatory capacity) will also have to be further strengthened (see also para. 34 below).
(v) A minimal part of the Court's resources would be spent on clearly inadmissible cases.
(vi) In short, this approach would be the most flexible and cost-effective one.

19. Some experts consider it to be a disadvantage that decisions on inadmissibility would no longer be taken by judges, which would represent a step backwards from the systematic judicialisation of decision-making by the Convention's control mechanism, as instituted by Protocol No. 11. With this option, the final decision on whether or not a particular case would receive judicial treatment would rest with the Registry.

b. A new type of judge

20. It has been suggested that filtering should be entrusted to a new category of judge. These judges would have to possess the qualifications required for appointment to judicial office and be subject to the same requirements as the regular judges with regard to independence and impartiality. Their term of office would be considerably shorter than that of the regular judges. Since the essential nature of their work would not require that they "possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence," as is required of regular judges by Article 21(1) ECHR, they could be at an earlier stage in their career than should be the case for regular judges and so their remuneration could therefore be lower. Furthermore, their mode of election would differ from that of regular judges to ensure a quick selection process which takes into account the needs of the Court. The Parliamentary Assembly could select the judges after having consulted the Court. Alternatively, the judges could be selected by the Court itself from a list of candidates submitted by States, possibly after the Parliamentary Assembly has approved the list. The number of judges for the filtering mechanism would vary according to the Court's needs.

21. The following advantages to this system have been suggested:
(i) The Court's decisions should be taken by judges; non-judicial staff should only do preparatory work.
(ii) As the inadmissibility decision taken by any filtering mechanism would be final and the last decision in the applicant's case, it is important for the applicant to have a judicial decision, which has higher external impact and would be far more acceptable than a decision by an administrative office responsible to a hierarchical superior.
(iii) The introduction of a judicial filtering body would allow every applicant exercising his/ her right under art. 34 ECHR to receive a judicial decision. The Convention system would thus demonstrate an equal approach to every application lodged.
(iv) The Applicants, whose rights the system is supposed to serve, have a right to a certain degree of equal treatment with the High Contracting Parties. The final decision against a High Contracting Party in a case is judicial; Applicants should therefore be entitled to judicial decisions of inadmissibility.
(v) Nearly two-thirds of inadmissible applications – currently left to committees and single judges – are manifestly ill-founded; insofar as this may touch upon difficult,

[18] This figure has been confirmed by the Registry.

substantive issues of Convention rights, such applications would more appropriately be determined by a judicial mechanism.

(vi) Maximum efficiency would be obtained by having persons with judicial experience undertaking filtering work, whereas Registry staff may have no, or no recent, experience of working in a national judicial system.

(vii) Additional filtering judges, being employed as such for a fixed period of time, would subsequently constitute a valuable connection between the Convention system and national legal systems.

(viii) The current system includes an element of dual control involving the Single Judge and the Non-judicial Rapporteur, which the proposed new system would preserve.

22. The following disadvantages have been suggested:

(i) A new category of judge would not be immediately operational.

(ii) There may be a risk of diverging practice between the filtering judges and the regular judges.

(iii) Concerns have been expressed about the budgetary consequences of this approach (see further under Section XI below).

(iv) It might prove difficult to recruit judges to deal solely with *prima facie* clearly inadmissible (and possibly repetitive) cases.

(v) The case files would not necessarily be in a language understood by the judge.

c. A combined option

23. This proposal would combine the options involving the Registry and a new category of judge. Specific members of the Registry would be given the competence to deal with applications that have been provisionally identified as clearly inadmissible for purely procedural reasons under Article 35(1) and (2) ECHR. Only specifically designated members of the Registry would be allowed to deal with such cases and should be able to refer them to a judicial body at any time, should they consider it necessary. In addition, a new category of filtering judge would be created to deal with cases provisionally identified as inadmissible under Article 35(3) ECHR, along with repetitive cases (see further Section V.b. below).

24. Arguments in favour of such a system include that it would preserve the principle of judicial decision-making for cases where some kind of opinion is needed on the substance of the application, but not for those which clearly do not fulfil even the most basic formal requirements for admissibility.

25. Possible disadvantages include those mentioned in paras. 19 and 22 above, with regard to the options involving either the Registry or a new category of judge outside the Registry. Some experts considered that clearly inadmissible cases should be dealt with in the same way regardless of the relevant admissibility criterion, the decisive factor being that these are "*clear-cut cases, where the inadmissibility of the application is manifest from the outset.*"[19]

V. Competence of a new filtering mechanism

a. "Single judge cases"

26. The competence of any new filtering mechanism would correspond at least to that of single judges under Article 27 ECHR as amended by Protocol No. 14. The filtering mechanism could thus declare applications inadmissible or strike them out of the Court's list of cases where such decision can be taken without further examination. This implies that the filtering mechanism will take inadmissibility decisions only in clear-cut cases, where the

[19] Cf. para. 67 of the Explanatory report for Protocol No. 14.

inadmissibility of the application is manifest from the outset (cf. § 67 of the Explanatory Report for Protocol No. 14).

27. The competence of the filtering mechanism would thus also cover the new admissibility criterion introduced by Protocol No. 14 (Article 35(3)(b) ECHR, as amended by Protocol No. 14). The filtering mechanism will in any case not be established before 1 June 2012. At that moment, the transitional rule contained in Article 20(2) of Protocol No. 14, according to which the application of the new admissibility criterion is reserved to Chambers and the Grand Chamber for the two years following the entry into force of the protocol, will expire. The Court's interpretation of the new admissibility criterion should then be sufficiently well-established to allow not only single judges but also any new filtering mechanism to apply Article 35(3)(b) ECHR.

b. Repetitive cases

28. Even if the Izmir Declaration did not repeat it, the Interlaken Declaration calls upon the Committee of Ministers also "to consider whether repetitive cases could be handled by judges responsible for filtering".

29. Allowing a new filtering mechanism to deal with repetitive applications could further increase the Court's case-processing capacity. However, it seems to be common ground – even among those that favour assigning filtering tasks to the Registry – that Registry staff should not decide on repetitive applications and issue judgements on the merits. It also seems to be generally thought that decisions on repetitive cases should be taken by three-judge committees.

30. Certain delegations fear that letting anyone other than regular judges decide on repetitive applications would send the wrong signal to respondent States who might get the impression that the issue concerned is considered as low priority by the Court, whereas such cases may in fact arise from serious underlying structural or systemic problems. In addition, it could be argued as a matter of principle that only regular judges should be able to issue judgments (as opposed to admissibility decisions). Similarly, it has been suggested that judgments would be delivered by persons without the necessary status vis-à-vis national supreme or constitutional courts, which could make such a system difficult to accept. The necessity of additional capacity with regard to repetitive applications has also been questioned by some experts, given that Protocol No. 14 opens up the possibility of three-judge-committees deciding on repetitive applications. Other experts pointed out, however, that repetitive cases are already considered as low priority by the Court and that there is a substantial and growing backlog of repetitive cases.

31. The disadvantages mentioned above would not apply to the temporary judges proposed under Section X below. Furthermore, possible solutions to some of these problems have been suggested: for example, that three-judge committees be composed of two regular judges and one filtering judge. As noted by the CDDH, "the answer would depend on who was responsible for filtering and what sort of mechanism was involved."[20]

VI. Role and capacity of the Registry

32. The establishment of a new filtering mechanism would not put into question the primary responsibility of the Registry for the triage of applications. The Registry would continue to screen all incoming applications and provisionally assign them to the various judicial formations (chamber, committee, single judge/ filtering mechanism). The Registry would also continue to prepare the decisions, as is currently the case.

[20] See doc. CDDH(2010)013.

33. In the model in which the filtering process as a whole is put into the hands of the Registry (see paras. 16-19 above), the Registry's role in the filtering mechanism naturally would be all-encompassing. In this case, the Registry would function as a filter which receives all incoming applications and, exclusively following their own assessment, forwards only a part of these to the judges of the Court.

34. Whether or not decisions on admissibility should be taken by members of the Registry, there would be interest in exploring, on the basis of an analysis of the overall current resources, working methods and output of the Court, whether an increase in the staff of the Registry would contribute to alleviating the problem, since the Registry is already responsible for triage of applications and the preparation of draft decisions for single judges.

VII. Static or flexible system

35. The new filtering mechanism could be conceived as a static mechanism or as a flexible one. In a static scheme, the filtering mechanism would be composed of a predetermined number of persons. The preference was for a flexible scheme, with the mechanism being used only when and in so far as it is necessary. As under the single-judge system today, there could, for instance, be several (additional) persons working on cases of high-count countries, whereas the filtering for low-count countries could be left to the regular judges of the existing bench. The number of persons involved would vary according to the Court's needs, and the categories of cases assigned to the filtering mechanism could change over time (this would depend on who is responsible for filtering – see Section IV above). In a flexible scheme, the filtering mechanism would be operational only at times when there actually is a need for additional filtering capacity. The filtering mechanism will function according to need. It has been suggested, however, that for the options involving a new type of judge, this flexibility would be constrained in practice by the terms of office of the judges appointed.

VIII. Remedies

36. Decisions of the filtering mechanism should be final. Providing for a legal remedy would run counter to the intention of streamlining and accelerating the filtering process. In addition, it would disturb the parallelism between the filtering mechanism and single judges whose decisions are final (Article 27(2) ECHR as revised by Protocol No. 14).

IX. Not a two-tier system

37. There appears to be general agreement that a reproduction of the former two-tier system (Court/ Commission) must be avoided. The new filtering mechanism would be part of the Court. It would – unlike the Commission – not be a body which decides whether a case is forwarded to a Chamber or not. It would do the work the single judge does in the present system.

38. To ensure conformity with the Court's case-law, a regular judge of the Court could preside over the filtering mechanism for a set period. This judge would be the liaison body between the Court as it exists today and the filtering mechanism. The judge would not act as a filtering judge, but would offer advice and assistance to the filtering judges/ officials and would have the task of ensuring coherence of the decisions issued by the filtering mechanism. The judge would be a member of the Court's Conflicts Resolution Board and would work closely with Jurisconsult to ensure conformity of the filtering mechanism's approach with that of the Court concerning admissibility issues. A mentoring program connecting filtering judges/ officials with experienced regular judges could be an alternative or an additional means that could contribute to conformity with the Court's case-law.

X. Ancillary issues – general reinforcement of the Court's capacity

39. It has also been suggested that along with reinforcing the Court's filtering capacity, further measures be taken to increase its general decision-making capacity. Introducing a new filtering mechanism of whatever kind would free judicial resources for work on substantive cases; but in addition, a further proposal has been made.

40. Although it is undoubtedly important to ensure that clearly inadmissible cases receive a quick response, it was also pointed out that a reform of the filtering mechanism cannot by itself free sufficient resources to tackle that part of the Court's case-load which is most important from the point of view both of respect for human rights and the time needed to process it. Indeed, while clearly inadmissible applications subject to filtering are the most numerous, but can be disposed of quickly, the heaviest part of the case-load consists of cases which cannot be declared inadmissible without further examination, require a more in-depth analysis and may lead to a finding of a violation of the Convention. It has furthermore been argued that the Court's prioritisation policy has, in effect, left some 20,000 of the 47,000 plus [21] prima facie admissible Chamber cases with little prospect of adjudication within a reasonable time.

41. It has therefore been suggested that a pool of temporary judges could be established, making it possible to strengthen the Court's general decision-making capacity when necessary. Such judges would:

(i) have to satisfy the Article 21 ECHR criteria for office;
(ii) be nominated by the High Contracting Parties and, possibly, approved or elected to the pool by the Parliamentary Assembly;
(iii) be appointed from the pool by the President of the Court for limited periods of time as and when needed to achieve a balance between incoming applications and disposal decisions (subject to the Court's budgetary envelope);
(iv) when appointed, discharge most of the functions of regular judges, other than sitting on the Grand Chamber or Plenary Court;
(v) when appointed, be considered as elected in respect of the High Contracting Party that had nominated them.

42. It has been argued that such a system may have the following advantages:

(i) it would make it possible to achieve a general balance between input and output of Chamber cases, enabling the Court to reduce the backlog and adjudicate new cases within a reasonable time;
(ii) it would be flexible, as temporary judges would only be engaged if, when and to the extent necessary and could reinforce the Court's capacity to deal with all sorts of cases;
(iii) it would have budgetary consequences only as and when activated and would only be activated if and to the extent that the Committee of Ministers provided necessary resources;
(iv) temporary judges, being employed for a fixed period of time, would subsequently constitute a valuable connection between the Convention and national legal systems.

43. It is argued that regular judges would probably still have far too little time to deal with lower-category Chamber cases., given the size of the backlog and the rate of arrival of new, prima facie admissible Chamber cases and even with responsibility for some filtering being given to the Registry and for other filtering and repetitive cases to filtering judges.

[21] On 1 January 2011, there were 47,150 applications pending before Chambers.

XI. Budget

44. All experts were aware of the inevitable cost, even if limited in time, of reducing the backlog, whether one simply increased the number of Registry staff or adopted a new filtering mechanism consisting of new judges, bearing in mind that each one would have to be assisted by new Registry staff.

45. As noted above, concerns have been expressed at the budgetary consequences of creating a new category of judge. It has been pointed out that if experienced Registry lawyers are given the competence to reject clearly inadmissible cases, as described in option a. under Section IV above, that would not necessarily have any budgetary consequences. Furthermore, it has been suggested that if option b. or c. in Section IV were chosen, the number of such filtering judges would be low compared to that of regular judges and as their remuneration would correspond to that of experienced Registry staff rather than to that of regular judges, the budgetary consequences of this approach would be limited.

46. A proper assessment of the cost-effectiveness of each option will be necessary at the appropriate time. This cannot, however, be undertaken at the present time, until the various options have been more clearly defined, but should form a precondition to any final decisions on which option or options to choose.

47. The CDDH also notes that the Court has pointed out on several occasions that its case-processing capacity could be substantially (but not sufficiently) increased even before the adoption of a new mechanism, by increasing the staff of the Registry. The question of the extent to which an increase in the staff of the Registry would contribute to alleviating the problem before the adoption of a new mechanism should be explored.

XII. Legal basis

48. All the above proposals would require amendment of the Convention.