Committee of Ministers

Evaluation Group

EG Court(2001)1 27 September 2001

Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights

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REPRÉSENTATION PERMANENTE
DE L'IRLANDE
AUPRÈS DU CONSEIL DE L'EUROPE

28 September 2001

Ambassador J Wolf
Permanent Representative of Liechtenstein
Chairman of the Committee of Ministers' Deputies
of the Council of Europe
STRASBOURG

Dear Chairman,

Report of the Evaluation Group on the European Court of Human Rights

The Committee of Ministers Deputies established on 7 February 2001 an Evaluation Group, composed of President Wildhaber, Deputy Secretary General Krüger (representing the Secretary General), and the undersigned (as Chairman), to make proposals on the means of guaranteeing the continued effectiveness of the European Court of Human Rights. I have the honour to forward to you the completed report of the Group including its detailed conclusions and recommendations. I have today transmitted a copy of the report and of this letter to the Delegations of all member states.

There can be no doubt as to the unique achievements of the Court in defining legal standards for the administration of justice in Europe and in safeguarding the personal liberty and security of individuals and their protection against unfairness and the abuse of power. The Court upholds pluralist democracy by securing core democratic principles. The Convention system, including the Court, is now an indispensable component of the framework for effective political democracy in Europe. It is a system which is unparalleled in terms of any other region of the world. Indeed, it is a system which is correctly seen as a model by which other regions are inspired.

Equally, however, there can be no doubt that the system's efficacy is now at serious risk, primarily as a consequence of the exponential increase in the Court's case-load. To allow the current situation to fester would be to rob the Court both of its credibility and authority. The problems it faces require an urgent response by the member States of the Council of Europe across the range of measures identified in our report.

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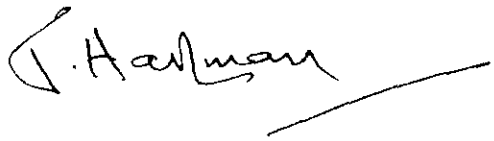
For that reason, I strongly endorse the proposal of the Chairman of the Committee of Ministers, Foreign Minister Walch, that the situation of the Court be addressed at the 109th Ministerial Session in Strasbourg on 7/8 November 2001. We must now begin the preparation of a text for consideration by Ministers at that session which, I believe, has to include a decision on the follow-up to be given to the conclusions of the Evaluation Group.

Yours sincerely,



Justin Harman
Ambassador
Chairman of the Evaluation Group

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PREFACE

A Court of Human Rights for all Europeans

The European Court of Human Rights is a unique body invested with a pioneering role. The scope of its competence and the breadth of its geographical reach are unprecedented in the history of international law. Almost 800 million women and men in 41 States have direct access to a judicial body to complain of alleged violations of their fundamental rights.

The European Court of Human Rights is the nerve centre of a system of human rights protection which radiates out through the domestic legal orders of virtually all European States. It sets common legal standards which permeate the legal orders of the Contracting States, standards which influence and shape domestic law and practice in areas such as criminal law, the administration of justice in criminal, civil and administrative matters, family law, aliens' law, media law, property law. Over the years and through its case-law, the European Convention on Human Rights has become deeply entrenched in the legal and moral fabric of the societies of the older Council of Europe States and this same process is well under way in newer States Parties. Its crucial role in securing the peaceful development of greater Europe is a model for a system of strong and effective international justice.

The system operates under the principle of subsidiarity; primary responsibility for securing the rights and freedoms set out in the Convention lies with the domestic authorities and particularly the judiciary. Courts throughout the Contracting States can and should apply the Convention and afford redress for breaches of it.

Where this national protection fails, individuals may bring their complaints to Strasbourg. These complaints trigger international scrutiny of the effectiveness of national human rights protection. Complaints declared admissible result in legally binding judgments, which are then enforced collectively through the Committee of Ministers of the Council of Europe. In this way the Convention States are locked into a system of collective responsibility for protection of human rights which is unparalleled in the world.

Citizens' confidence in the democratic method of government is strengthened by the knowledge that their rights will be protected in an effective way, if necessary ultimately through recourse, outside the domestic legal order, to the European Court. States too benefit directly from this external control which makes it possible to identify weaknesses in their legal system. The Court's judgments have frequently led to the amendment of legislation and/or practice.

Democracy lies at the heart of the guarantees protected by the Court. The Court upholds pluralist democracy by securing core democratic principles in areas such as free elections, freedom of expression, religion, association and assembly and non-discrimination.

The Court promotes the rule of law, which provides the essential framework for effective political democracy. Thus, it defines legal standards for the administration of justice and for the personal liberty and security of individuals and other safeguards protecting the individual against arbitrariness, unfairness and the abuse of power.

The Court strengthens respect for human dignity by securing vital guarantees such as the right to life, the prohibition of ill-treatment and the protection of private and family life.

In the first decades of its existence the Court firmly established its position in the European constitutional landscape. It produced an extensive body of case-law giving concrete content to the Convention rights and freedoms, specifying the nature of States' obligations, and above all adapting the Convention standards in line with evolving European societies. It applied a living instrument in a process of continuing and dynamic interaction between the international mechanism and the national legal systems. This led to a generally higher level, and increased understanding, of human rights protection within the older Convention States which proved a unifying and stabilising factor throughout Western Europe, as well as acting as a catalyst for the breakdown of the barriers between East and West.

Since 1989-1990 the enlargement of the Council of Europe has created a new dimension for the operation of the Convention system. While the underlying purpose of the system remained the same, the Court now had a further role to play in the consolidation of democracy and the rule of law in the wider Europe. This is a process which continues today. In this sense its significance has arguably never been greater. The Court, through its case-law and in partnership with national Supreme and Constitutional Courts, serves to infuse national legal systems with the democratic values and the legal principles of the Convention and helps to ensure that Convention standards are implemented in everyday practice.

The major challenge for the Court today is not only to maintain and develop the Convention standards but also to ensure that the Europe of human rights remains a single entity with common values.

However, the Court is confronted with a steadily rising volume of applications, which grew by over 500% between 1993 and 2000. This is not solely the consequence of the accession of new States; in older member States individuals also increasingly turn to Strasbourg. The system is seriously overloaded and, with the relatively limited resources available to it, the Court's ability to respond is in danger. Urgent action is now required for Europe's unique achievement in human rights protection to be safeguarded for the 21st Century.

This report sets out the basis for such action.

EXECUTIVE SUMMARY

The purpose of this report is to examine and propose measures for ensuring the continuing effectiveness of the European Court of Human Rights in the light of its ever-increasing workload. In order to do this, the report sets out the Court's situation today and presents the predicted evolution of case-load on the basis of the assessment of the Council of Europe's Internal Auditor (Chapters I - III).

Implications of the problem (Chapter IV)

On the basis of the projections made by the Council of Europe's Internal Auditor, the report concludes that immediate action is indispensable if the Court is to remain effective and retain its credibility and authority (paragraphs 37-39). An estimate is also made as to developments in the matter of the supervision of the execution of judgments (paragraph 40).

The Evaluation Group's approach to the problem (Chapter V)

The Evaluation Group adopts the following basic premises (paragraph 41):

- the substantive rights guaranteed by the Convention should not be reduced;
- the right of individual application must be preserved in its essence;
- the Court must be able both to dispose of applications within a reasonable time and to maintain the quality of its judgments.

Having analysed the problem and its implications and indicated the general approach adopted, the Evaluation Group identifies five areas in which parallel action should be contemplated. These are:

- national measures
- execution of judgments
- measures involving no amendment of the Convention
- resources
- measures involving amendment of the Convention

National measures (Chapter VI)

The primary duty to protect the Convention rights lies with the national courts and authorities, the role of the Strasbourg Court being subsidiary. The Evaluation Group therefore first considers measures to be taken at national level to improve domestic implementation of the Convention (paragraph 44).

The Group endorses measures discussed at the November 2000 Ministerial Conference in Rome, namely:

- the provision of effective domestic remedies;
- the systematic screening of draft legislation and administrative practices;
- reinforcement of training in human rights;
- wider dissemination of information concerning the Court to national authorities, including the provision of translations of extracts from key judgments;
- ensuring that national courts have the requisite status, authority and independence;
- the introduction of procedures for the re-opening of domestic proceedings after a finding by the Court of a Convention violation (paragraph 45).

In addition, the report draws attention to the need to furnish individuals with adequate information concerning the Court and its procedures (paragraph 46).

It further recalls the obligation of the Committee of Ministers to keep the question of national measures under close and constant scrutiny and the need for collective and complementary efforts by all concerned; a feasibility study should also be carried out into means of reinforcing interaction between the Strasbourg Court and national courts (paragraph 47).

Execution of judgments (Chapter VII)

A court is not "effective" if its judgments are not implemented. The Group thus examines the issue of the supervision by the Committee of Ministers of execution of the Strasbourg Court's judgments. The Group notes the large number of "repetitive" applications, very many of which would not have been made if appropriate general measures had been taken or taken more promptly by the State concerned following a finding of violation (paragraphs 43 and 48).

In this connection the report:

- welcomes the trend in the Parliamentary Assembly to follow the question of execution more closely (paragraph 52);
- recommends the introduction of a special Committee of Ministers procedure in the presence of "repetitive" applications (paragraph 51);
- emphasises the need for that Committee to use every possible means to ensure the expeditious execution of judgments and recalls its mandate to seek further means to this end (paragraph 53).

Measures to be taken in Strasbourg involving no amendment of the Convention (Chapter VIII)

Improvements have already been made by the Court to its internal working methods (paragraph 56). Proposals currently under discussion within the Court involve notably:

- a modification of the procedure relating to the registration of applications;
- the conferring of a new, non-dispositive role on designated Registry officials, under the Court's supervision, in respect of streaming of applications; and
- recourse to a summary procedure for certain categories of application (paragraphs 57-59).

The Evaluation Group endorses these proposals as indicating the way forward in the immediate future and encourages their adoption (paragraph 60).

The Group endorses the suggestion that the Court should continue to play a pro-active role in respect of friendly settlements, with attempts to reach a settlement being pursued at an earlier stage in the proceedings. The Committee of Ministers might adopt a Resolution or Recommendation encouraging Governments to conclude settlements; also incentives for applicants to settle might be introduced in appropriate cases (paragraph 62).

Other matters discussed under this head include:

- problems attendant on fact-finding missions by the Court and the relationship of this issue to necessary national measures (paragraph 63);
- the important role of information technology in securing the Court's continued effectiveness and the consequent need to make resources available for long-term information technology development (paragraph 64);
- the utility of an annual report by the Court on its organisation and activities, highlighting case-law trends and problem areas (paragraph 65);
- certain outstanding issues on the institutional status of the Court within the Council of Europe which should be urgently determined (paragraph 67).

Resources (Chapter IX)

The report finds that no guarantee of stability can be given as regards the Court's future needs for resources, but that resources cannot be increased indefinitely (paragraph 68). The following conclusions are drawn:

- the Registry has additional staffing needs, identified by the Internal Auditor, which should be met, including:
  - further legal and secretarial staff for case-processing;
  - reinforcement of supervisory structures generally, particularly human resources management, training and research (paragraphs 69-71);
  - adequate resources should be provided to permit full implementation of the Court's information technology programme (paragraph 72).

The following related matters are noted:

- the department for execution of the Court's judgments, within the Directorate General of Human Rights, also has unmet staffing needs (paragraph 73);
- in view of the accommodation problems in the Human Rights Building, it is imperative that a decision on a new building for the Council of Europe be taken before the end of 2001 (paragraph 74);
- since the Court's activities cannot be contracted at will, it is concluded that at least increases in its budget should be treated separately and without regard to the bases applied in fixing the Council of Europe's ordinary budget; the same should apply to increases in resources related to the supervision of the execution of judgments (paragraph 77);
- a system of two- or three-year budget programmes should be devised (paragraph 78).

Measures involving amendment of the Convention (Chapter X)

Certain detailed matters now dealt with in the Convention could be transferred to a separate instrument, capable of amendment by a simpler procedure than Protocols (paragraph 88). In the interests of ensuring continuity and further guaranteeing the independence of the Court, the current provisions on the judges' term of office should be modified so as to lay down that they are elected for a single, fixed term of not less than nine years (paragraph 89).

The report makes a number of specific recommendations as regards the intake and processing of cases. Soon after 2005 the increase predicted will once again exceed the Court's case-processing capacity (as augmented by the additional staff and the other measures mentioned in preceding Chapters of the report) (paragraph 80). Accordingly, in the Group's view, further measures will be needed to cope with the workload (paragraph 81):

- a provision should be inserted in the Convention that would, in essence, empower the Court to decline to examine in detail applications that raise no substantial issue under the Convention (paragraphs 92-93);
- the necessary studies on this new provision should also consider the devising of a mechanism whereby certain applications could be remitted back to domestic authorities (paragraph 96);
- a study should be carried out by the appropriate Council of Europe bodies, in consultation with the Court, into the creation within the Court of a new and separate division for the preliminary examination of applications (paragraph 98).

Conclusions and recommendations (Chapter XI)

This Chapter summarises the report's conclusions and recommendations (paragraphs 99-100).

I. FOREWORD

A. The Ministerial Conference (Rome, 2000)

1. To mark the 50th anniversary of the opening for signature in Rome on 4 November 1950 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), the Council of Europe and the Italian authorities organised, in Rome on 3-4 November 2000, a European Ministerial Conference on Human Rights.

2. One of the themes on the agenda was "Institutional and functional arrangements for the protection of Human Rights at national and European level", which included an item "Ensuring the effectiveness of the European Court of Human Rights". By incorporating this item, the Conference took up concerns that had already been expressed and discussed both within the Court and in other quarters. Thus, on the proposal of the Irish Presidency, the Committee of Ministers of the Council of Europe had already established a Liaison Committee with the Court "to deal with all matters relating to the Court and to consider wider issues of human rights protection in Europe".

In Resolution I adopted at the close of the Rome proceedings, the Conference voiced concern at the difficulties encountered by the Court in dealing with the ever-increasing volume of applications and expressed the view that it was the effectiveness of the Convention system that was now at issue. It called upon the Committee of Ministers to "identify without delay the most urgent measures to be taken to assist the Court in fulfilling its functions" and to "initiate, as soon as possible, a thorough study of the different possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation through the Liaison Committee with the ... Court ... and the Steering Committee for Human Rights".

B. The Evaluation Group

3. An immediate response to the above-mentioned Resolution was the setting up by the Committee of Ministers of an ad hoc Working Party to conduct an examination of the additional budgetary requests of the Court for 2001. The recommendations of this Working Party led to the allocation to the Court of additional staffing resources (see paragraph 18 below). The Chairman of the Working Party (who is also Chairman of the present Evaluation Group) drew attention to the need for an analysis of the Court's medium-term needs and indicated that he would be proposing the establishment of an evaluation group for this purpose.

4. By decision of 7 February 2001, the Committee of Ministers, sitting at Deputy level, set up an Evaluation Group to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights, with the following terms of reference:

"i. The *Evaluation Group* is a body set up by decision of the Committee of Ministers in consultation with the President of the European Court of Human Rights.

ii. Having due regard to the judicial status of the Court under the European Convention on Human Rights and the resulting constraints, the *Evaluation Group* will:

a. examine matters concerning the observed and expected growth in the number of applications to the European Court of Human Rights and the Court's capacity to deal with this growth; and

b. consider all potential means of guaranteeing the continued effectiveness of the Court with a view, if appropriate, to making proposals concerning the need for reform and report thereon to the Committee of Ministers."

The Group was instructed to submit its conclusions and recommendations to the Committee of Ministers by 30 September 2001.

5. The members of the Evaluation Group are: Mr Justin HARMAN, Permanent Representative of Ireland to the Council of Europe, Chairman of the Ministers' Deputies' Liaison Committee with the European Court of Human Rights (in the Chair), Mr Luzius WILDHABER, President of the European Court of Human Rights, and Mr Hans Christian KRÜGER, Deputy Secretary General of the Council of Europe, acting on behalf of the Secretary General.[1]

C. Procedure followed by the Group

6. The Committee of Ministers directed that representatives of certain specified bodies should be associated with the work of the Evaluation Group as and when its members should so decide.

Representatives of the European Court of Human Rights and its Registry have been associated with the work of the Group at all times. The Group has also consulted representatives of the other specified bodies, namely the Parliamentary Assembly of the Council of Europe, the Steering Committee for Human Rights, the European Committee on Legal Co-operation, the European Committee on Crime Problems and the Council of Europe's Directorates General of Human Rights and of Administration and Logistics. As empowered by the decision of 7 February 2001 of the Committee of Ministers, the Group also consulted in writing a number of external experts.[2]

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[1] *Mr Jonathan L. Sharpe, Deputy Secretary General of the International Commission on Civil Status, acted as Executive Secretary of the Group.*

[2] *Namely, Mr Frank Franceus, of the Belgian Ministère Fédéral de la Fonction Publique et de la Modernisation de l'Administration; Mr Michel Gentot, President of the French Commission Nationale de l'Informatique et des Libertés ; Mrs Lynn Knapman, Head of the United Kingdom Administrative Court Office. Spontaneous observations were also received from Professor Gérard Cohen-Jonathan.*

Furthermore, Mr Paul Ernst, the Council of Europe's Internal Auditor, has been closely associated with the work of the Group. He made available to it his report to the Secretary General, which contains valuable material notably on the future development of the Court's case-load, its staffing requirements and, for comparative purposes, the workload and budget of certain European international and domestic superior courts.

The Group also consulted in writing Amnesty International, the European Co-ordinating Group for National Institutions for the Promotion and Protection of Human Rights, the Fédération Internationale des Ligues des Droits de l'Homme and the International Commission of Jurists (organisations having observer status with the Council of Europe's Steering Committee for Human Rights); the Council of the Bars and Law Societies of the European Community; and Mr Vladimir Toumanov, former member of the Strasbourg Court in respect of Russia.

7. Between 7 February and 24 September 2001, the Group held a total of 18 full meetings as well as a number of working sessions. It also had discussions with representatives of the Court's Reform Committee and its Chairman met with a number of persons who were considered to be in a position to assist the Group. In addition, very valuable co-operation was established with the Reflection Group on the reinforcement of the Human Rights protection mechanism (set up by the Steering Committee for Human Rights); the two Groups met together and the Secretary of each attended meetings of the other.

The Evaluation Group would like here to place on record its appreciation of the invaluable assistance it has received from all those whom it has consulted or who have been associated with its work. The need to keep this report within manageable proportions has meant that, whilst all suggestions – totalling some 70 – were carefully considered by the Group, they are not specifically identified in the body of the report. Certain contributions, however, appear in the Appendices hereto.

II. GENERAL BACKGROUND

A. The European Convention on Human Rights

8. The Convention was drafted in the immediate aftermath of the Second World War. Its authors had in the forefront of their minds the aim of preventing a recurrence of the atrocities that had occurred during that conflict and the desirability of establishing a system for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights of 10 December 1948.

To this end, the Convention not only defined a number of rights and freedoms which the Contracting States undertake to secure to everyone in their jurisdiction, but also set up an enforcement machinery. This latter feature constituted an innovation in international law. It is important to observe that the duty of securing rights was cast primarily on the States, the enforcement machinery being intended to play a vital but subsidiary role.

9. The task assigned to the enforcement machinery was the examination of complaints that a Contracting State had violated rights guaranteed by the Convention, such complaints being introduced either by another Contracting State or by a person, non-governmental organisation or group of individuals (hereinafter "individuals"). On account of political compromises reached at the time the machinery was complex and not devoid of anomalies. It was composed of two distinct institutions set up by the Convention (the European Commission of Human Rights and the European Court of Human Rights) and also of the Committee of Ministers of the Council of Europe (the Organisation's executive body, composed of the Ministers of Foreign Affairs of the member States, whose Convention functions are in practice carried out by the Ministers' Deputies). Commission and Court were both part-time institutions, composed of one member in respect of each Contracting State or each member State of the Council of Europe, respectively.

10. Allegations of violation of the Convention could be laid before the Commission either by a Contracting State or, provided that the Commission's competence in the matter had been recognised by the respondent State, by an individual. The Commission's task was to examine whether the application met the admissibility criteria laid down by the Convention, to ascertain the facts, to attempt to achieve a friendly settlement of the case and, in the absence of a settlement, to write a report expressing a non-binding opinion as to whether the Convention had been violated.

Provided that the Court's jurisdiction had been recognised or accepted by the State or States concerned, the case could subsequently be referred to the Court for adjudication, either by the Commission or by the applicant State, the respondent State or the State of which the individual applicant was a national. If the Court did not have jurisdiction or in the absence of such reference, the case was left for decision by the Committee of Ministers. It is to be noted that the individuals who had complained to the Commission in the first place could not themselves refer the case to the Court (although such a power was, to a limited extent, granted to them by Protocol No. 9 to the Convention, which entered into force on 1 October 1994). Supervision of the execution of the judgments of the Court, which are binding on the State concerned, was entrusted by the Convention to the Committee of Ministers.

It should be added that, although recognition of the Commission's competence and of the Court's jurisdiction were optional, the position was reached, over the years, in which in practice all the Contracting States had accepted both.

The division of labour between Commission and Court was such that, it may be said in a general way, the Court was able to concentrate its attention on the substantive legal issues in a reduced number of leading cases referred to it. Whilst it had powers to investigate facts and on occasion dealt with issues of admissibility, these matters – like settlement negotiations – were pre-eminently the province of the Commission.

Complaints by one Contracting State against another have at all times remained rare; they are not dealt with further in this report.

11. The members of the Commission and the judges of the Court were not only not resident in Strasbourg but also, for the most part, had other professional activities (as judges, academic lawyers or practising lawyers, for example). They convened, generally in Strasbourg, as often as was necessary for the transaction of Convention business, but growth in the workload meant eventually that, without counting work done at home, they were devoting a substantial amount of time to their Convention duties (8 sessions of 2 weeks each per year for the Commission and 10 sessions of 10 days each per year for the
Court).

B. Protocol No. 11

12. Over the years, several amendments, both substantive and procedural, were made to the Convention by Protocols. A major step was taken by Protocol No. 11, which restructured the original control machinery and entered into force on 1 November 1998.

Reasons that prompted the elaboration of this instrument included: the increasing workload of the existing institutions (for example, the number of individual applications registered with the Commission grew from 1,013 in 1988 to 4,721 in 1997, and the number of judgments – including decisions rejecting applications submitted under Protocol No. 9 – delivered by the Court from 19 in 1988 to 150 in 1997); the increasing length of time taken to dispose of cases and an aim of shortening the length of the Strasbourg proceedings; the difficulty with which part-time institutions were able to meet their obligations; and a desire to eliminate a certain overlap between Commission and Court proceedings, in that both institutions undertook an examination of the merits of admitted cases.

13. Under Protocol No. 11, the existing Commission and Court were replaced by a single, full-time institution (which retained the title of "European Court of Human Rights"), composed of one judge in respect of each Contracting Party to the Convention. The Convention now stipulates that judges shall not engage in any activity incompatible with the demands of a full-time office, and Resolution (97)9 of the Committee of Ministers on the status of the judges provides that they shall reside at or near the seat of the Court (Strasbourg). The Protocol also reduced the term of office of judges from nine to six years.

In addition to this basic structural change, Protocol No. 11 also formally abolished any requirement as to acceptance by States of the competence of the Strasbourg machinery to receive applications from individuals or as to recognition or acceptance by States of the Court's jurisdiction. It also repealed Protocol No. 9. Furthermore, the role of the Committee of Ministers was reduced to that of supervising the execution of the Court's judgments (as to which, see paragraphs 33-34 below); it is no longer called on to examine the merits of cases. In sum, since November 1998 all applications alleging violation of the Convention, emanating either from States or individuals, can be lodged directly with and will be examined by the Court.

14. It follows from the foregoing that the new Court's role goes far beyond ruling on the substantive issues raised by a case; it has inherited from the Commission all of the latter's tasks in the matter of filtering applications (as to which, see paragraphs 22-23 and 25 below), fact-finding, determining admissibility and friendly settlement negotiations.

C. Enlargement of the Council of Europe

15. The events of 1989 and 1990 brought in their train a vast change in the Council of Europe, in that there was a rapid increase in the number of its member States, from 23 at the end of 1989 to 43 in 2001[3]. In its approach to enlargement, the Council of Europe decided that ratification of the Convention shortly after joining the Organisation should be a condition for accession thereto; the Evaluation Group considers that this fact must be taken into account when solutions are being devised for the challenges currently facing the Court. Consequently, the Convention, to which 22 States had previously been party, was ratified in or after 1990 by 19 new member States, most of them being countries of Central and Eastern Europe. For the enforcement machinery this meant that the number of potential applicants, if calculated by reference to the population of the Contracting States, grew from 451 to 772 million. As regards States in the transitional period of evolving from their previous to democratic regimes, care had to be taken that established standards were maintained. Such States were likely to generate cases raising issues different from and more complex than the issues in cases originating in the older member States, especially where structural problems were involved. Ratification of the Convention by a new member State entailed the election of a new member of the Commission (until 1998) and of a new judge, who had to familiarise themselves fully with the practices, traditions, perspectives and case-law of the Strasbourg institutions. It may also be observed that, when the reform leading to Protocol No. 11 was first conceived, this substantial and rapid enlargement of the Council of Europe and the impact it would have on the control machinery was not anticipated.

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[3] *At the end of 1989, the member States were: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechstenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom. They were joined: in 1990, by Hungary; in 1991, by Poland; in 1992, by Bulgaria; in 1993, by Estonia, Lithuania, Slovenia, the Czech Republic, Slovakia, Romania; in 1994, by Andorra; in 1995, by Latvia, Albania, Moldova, Ukraine, "the former Yugoslav Republic of Macedonia"; in 1996, by the Russian Federation, Croatia; in 1999, by Georgia; and in 2001, by Armenia, Azerbaijan.*

D. Budget

16. Article 50 of the Convention provides that the expenditure on the Court shall be borne "by the Council of Europe" (and not by the Contracting Parties to the Convention). Until now, the budget of the Court (and of the Commission and former Court before it) has always been included as a particular Vote in the ordinary budget of the Council as a whole. The scale of States' contributions to the Court's budget has thus been the same as that of their contributions to that ordinary budget. One result of this is that the contribution of some States does not suffice to cover certain expenses (e.g. judge's and Registry staff emoluments) deriving from the sole fact of being party to the Convention.

17. In recent years, the budget of the Commission and Court has developed considerably, as is shown by the following (rounded) figures: 1989: € 7 m. (FRF 44 m.); 1997: € 22 m. (FRF 145 m.); 1998: € 23 m. (FRF 152 m.); 1999: € 25 m. (FRF 164 m.); 2000: € 26 m. (FRF 171 m.); 2001: € 29 m. (FRF 190 m.); draft budget for 2002: € 29.2 m. (FRF 192 m.). This increase in financial resources has been by way of derogation from the practice of setting a ceiling on the Council of Europe's ordinary budget. The impact of that practice is nevertheless reflected in the fact that the growth in the "Convention budget" has been far less in the period after the entry into force of Protocol No. 11 (1998) than in the period from 1989 (beginning of the enlargement of the Council of Europe) to 1998.

The budget of the Commission and Court has represented a continuously increasing proportion of the total ordinary budget of the Council of Europe (10% in 1989, rising to 15.8% in 2001 and 16.15% in the draft budget for 2002). In the period from 1989 to 2001 the financial resources of the institutions have grown more than twice as much as the resources made available, in the ordinary budget, for the other activities of the Council of Europe.

It may be noted that the budget of the Council is annualised, with the result that the needs and requirements of the Court are the subject of debate within the Committee of Ministers every year.

E. Staffing of the Court

18. The Court is assisted by a Registry, which at 1 February 2001 was composed of 295 officials (185 permanent, 95 temporary and 15 trainees). Of these 196 (including 62 permanent and 31 temporary lawyers) were case-processing staff, responsible for dealing with correspondence, examining applications and preparing files and documents thereon for the attention of the judges; the remainder are engaged in managerial, administrative, translation and support duties.

The number of officials in the Registry (or in the Registry of the former Court and the Secretariat of the Commission) has also grown with time, as is shown by the following figures for permanent staff: 1989: 74; 1997: 161; 2001: 185. In December 2000, the Committee of Ministers approved a special appropriation to cover the recruitment of 45 additional temporary lawyers and an additional 15 secretaries and the maintenance of a scheme for trainee lawyers.

Here again, the proportion of resources available to the Convention institutions as compared with those available to the Council of Europe as a whole has increased over the years. Of the total permanent staff of the Council, 8.6% were working for the Commission and Court in 1989 and 17% for the Court in 2001.

F. Accommodation

19. The Court is housed in the Human Rights Building in Strasbourg, which premises are also occupied (and used for meetings) by the Council of Europe's Directorate General of Human Rights and its staff and the Human Rights library. The Council of Europe's Committee of Experts on Buildings noted in February 2001 that the situation in the Human Rights Building had worsened since late 1999 and that even a moderate extension of the Court and its staff would result in serious accommodation problems until the Directorate General moved to other premises. In a report of June 2001 the Committee again emphasised the need to find additional space for offices and other facilities for the Court. This question is currently under discussion in the Committee of Ministers.

G. Technological resources

20. From 1996 the Court developed a decentralised information technology system which had three main features:

(a) A client-server network for 350 users.

(b) A sophisticated case-management system (CMIS), which is central to the Court's capacity to respond effectively to increased case-load by, among other things, reducing the time needed to enter data, by automatically triggering document production in response to procedural events and by increasing accessibility, and rapidity of retrieval, of up-to-date case-management information and statistics.

(c) A case-law data base (HUDOC) accessible through the Court's internet site. All the Court's judgments (and many of its decisions) can be consulted via HUDOC, using a powerful search engine.

The Court now intends to integrate HUDOC into CMIS to create a single system managing the internal and external access to judgments and case-files. Phase II of CMIS will also see a development allowing external users to access the public documents in the case-files (to ensure compliance with Article 40 para. 2 of the Convention). Scanning technology will be used to transform hard-copy files into electronic versions that can be entered into the CMIS system.

In addition, in agreement with the Directorate General of Human Rights, the Court is planning to open restricted access to the CMIS database in order to facilitate the work of the Directorate General and the Committee of Ministers in connection with the supervision of execution of judgments. At the same time Court users will be enabled to track data concerning execution of judgments.

Further particulars concerning the Court's information technology programme appear in Appendix II hereto.

H. Languages

21. A particular feature of the Court relates to languages. Whilst its official languages are English and French, the need to ensure that the right of individual application is real and not illusory means that the Court must be able to handle communications from applicants in their own language. The Court today deals with applications in 37 national official languages and its Registry must therefore comprise an adequate number of staff with the appropriate linguistic knowledge. The organisation of the Court's work is such that judges, with Registry assistance, often have to deal with the first examination of applications drafted in a language with which they are not familiar.

III. IDENTIFICATION OF THE PROBLEM

A. Tasks of the Court

22. An important point to be made at the outset is that the Strasbourg Court is not a court of appeal from national courts. It is not its role to re-hear cases which have been the subject of domestic proceedings. However, there are circumstances in which the Court may be called upon to make its own assessment of the facts, notably where no effective domestic proceedings have been conducted. In a number of cases with which it has to deal, the legal issues have not been "pre-digested" and the facts have not been elucidated by a lower jurisdiction. Again, applications of all kinds, however fanciful or unmeritorious, may be submitted to Strasbourg and, with the entry into force of Protocol No. 11, the task of sifting them, formerly carried out by the Commission, has devolved upon the Court (which receives approximately 800 letters every day).

B. Provisional applications and applications registered

23. In its sifting task, the Court has until now followed the previous practice of the Commission, in that applications received are not immediately registered. There will first of all be correspondence between the Registry and the individual concerned, whose attention will be drawn to matters that may render the application inadmissible (for example, failure to exhaust domestic remedies or comply with the time-limit for applying; complaint or allegation having no connection with a right guaranteed by the Convention or ill-founded in the light of existing case-law). Nevertheless, if applicants insist, their applications must – save in the event of failure to supply certain documents or information – be registered, no power of decision being vested in the Registry. The fact that this practice leads very many applicants to desist explains the vast difference between the number of applications received ("provisional applications") and of applications registered, cited in paragraph 25 below.

C. General points on statistics[4]

24. Four general points about the statistics that follow should be mentioned.

Firstly, on account of their rarity, applications by States have been left out of account.

Secondly, the number of provisional applications and applications registered and the growth in the number thereof vary greatly from respondent State to respondent State.

Thirdly, for the years prior to 1999 (the first full year of the new Court's existence) the figures cover applications lodged with the Commission.

Fourthly, the new Court did not commence its activities in November 1998 with a clean slate; it inherited 92 pending cases from the former Court and 6,684 registered applications from the Commission.

D. Individual applications

25. The annual number of provisional applications grew from 4,044 in 1988 to 20,538 in 1999, and then to 26,398 in 2000 (that is, by some 553% over the full period and by some 28% in the last year). In the first seven months of 2001, 20,739 provisional applications were received; if the same rate were maintained, provisional applications in 2001 would total 35,553, an increase of nearly 35% over 2000.

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4 *As well as the details given in the body of the report, statistical information appears in Appendix I.*

The annual number of applications registered grew from 1,013 in 1988 to 8,402 in 1999, and then to 10,486 in 2000 (that is, by some 935% over the full period and by some 25% in the last year). In the first seven months of 2001, 7,909 applications were registered; if the same rate were maintained, registered applications in 2001 would total 13,558, an increase of more than 29% over 2000.

No year between 1988 and 2000 saw a significant decrease in the number of applications, whether provisional or registered.

Over the period considered, the number of applications registered in a year is a relatively small percentage of the number of applications received in the same year (25% in 1988, 41% in 1999, 40% in 2000 and 38% in the first seven months of 2001).[5] There are thus roughly two unregistered applications for every registered application, which illustrates vividly the impact of the pre-judicial part of the sifting process.

26. The following table indicates the number of applications registered for each Contracting State in 1999 and 2000 and the number of applications registered per million inhabitants for each Contracting State for each of those two years.

State	*Applications registered*		*Applications registered/ population (1,000,000)*	
	1999	**2000**	**1999**	**2000**
Albania	1	3	0.3	0.9
Andorra	1	3	*	*
Austria	227	241	28.0	29.8
Belgium	136	73	13.3	7.2
Bulgaria	196	304	25.1	39.1
Croatia	104	86	24.2	20.0
Cyprus	17	17	*	*
Czech Rep.	151	198	14.7	19.3
Denmark	56	56	10.6	10.6
Estonia	29	46	20.7	32.9
Finland	144	109	27.7	21.0
France	870	1032	14.7	17.4
FYRO Macedonia	16	18	8.0	9.0
Georgia	0	7	0	1.4
Germany	535	592	6.5	7.2
Greece	144	124	13.6	11.7
Hungary	94	161	9.3	16.0
Iceland	1	4	*	*
Ireland	20	18	5.3	4.7
Italy	883	866	15.3	15.1
Latvia	29	80	12.1	33.3
Liechtenstein	1	3	*	*
Lithuania	76	182	21.1	50.8
Luxembourg	12	15	*	*

[5] *It should be noted that applications are not necessarily registered in the same year as they are received.*

Malta	6	3	*	*
Moldova	32	62	7.3	14.1
Netherlands	206	173	13.0	10.9
Norway	20	30	4.4	6.7
Poland	692	776	17.9	20.1
Portugal	112	98	11.2	9.8
Romania	295	640	13.2	28.6
Russia	971	1324	6.7	9.1
San Marino	0	1	*	*
Slovak Rep.	163	283	30.2	52.6
Slovenia	86	54	45.3	28.4
Spain	227	284	5.7	7.1
Sweden	175	232	19.7	26.2
Switzerland	156	187	21.4	25.6
Turkey	653	734	9.9	11.2
Ukraine	434	727	8.8	15
United Kingdom	431	640	7.2	10.8
Total	**8402**	**10486**	**11**	**14**

* For States with a population of less than 1 million inhabitants, the calculation of averages would be misleading.

E. Special situation arising from applications concerning the length of court proceedings in Italy

27. Many applications received in Strasbourg allege that the length of domestic criminal, civil or administrative court proceedings has exceeded the "reasonable time" stipulated in Article 6 para. 1 of the Convention (more than 3,129 of a total of 5,307 applications declared admissible between 1955 and 1999). A particularly high number of such applications have concerned Italy. Thus, of the total of 21,128 applications registered in the period from 1 November 1998 to 31 January 2001, 2,211were directed against Italy; of these, 1,516 related to the length of proceedings. Again, of the 1,085 applications declared admissible in 2000, 486 concerned Italy and, in 428 cases, related to this same issue. In addition, as at July 2001, there were altogether about 10,000 further provisional applications against Italy falling into this category, of which 3,177 files were ready for registration but could not be processed for lack of human resources in the Registry.

Legislation on this matter has very recently been adopted, in the shape of Law No. 89 of 24 March 2001, which provides that anyone who has suffered pecuniary or non-pecuniary damage by reason of violation of the "reasonable time" requirement is entitled to lodge a request for just satisfaction with the Court of Appeal. In the framework of the execution of judgments, the Committee of Ministers is awaiting to assess the impact of a broader range of measures taken by Italy with a view to speeding up court proceedings. The effect of the new Law and those other measures on the case-load of the Strasbourg Court remains to be seen.

F. Disposal of applications

28. The statistics also reveal that, of the applications received that survive the initial sifting process and are registered, few proceed to judgment on the merits. Of the 7,711 registered applications disposed of by the Court in 2000 (with the 1999 figures in brackets):

- 6,774 (3,519) were declared inadmissible or struck out of the list (i.e. about 88% (94%) of the total disposed of); of these applications some 92% (79%) were the subject of a unanimous decision of a Committee of three judges (see paragraph 30(b) below);

- 227 (39) were concluded by a friendly settlement;

- 695 (177) were the subject of a judgment on the merits (i.e. about 9% (5%) of the total disposed of);

- 15 (2) were otherwise disposed of (struck out after the admissibility decision)[6].

G. Pending applications and "productivity"

29. As at 31 July 2001, there were 18,292 registered applications pending before the Court (i.e. uncompleted cases, whether those awaiting a first examination of admissibility or those at a later phase of the adjudication process). This figure represents an increase of nearly 45% in the number of such applications at the end of 1999 (12,635).

As with the number of applications registered, the number of registered applications pending varies considerably from State to State. At 1 July 2001, the situation was as follows (the figures in brackets being the number of registered applications pending at 1 July 2000):

Albania:	5 (2)	Luxembourg:	12 (18)
Andorra:	5 (1)	Malta:	1 (3)
Austria:	431 (411)	Moldova:	52 (45)
Belgium:	199 (191)	Netherlands:	195 (205)
Bulgaria:	600 (368)	Norway:	27 (48)
Croatia:	118 (73)	Poland:	1,513 (1,216)
Cyprus:	28 (29)	Portugal:	203 (166)
Czech Republic:	357 (283)	Romania:	932 (678)
Denmark:	68 (54)	Russia:	1,685 (909)
Estonia:	76 (39)	San Marino:	6 (11)

6 *It may be added that, in judgments finding a violation of the Convention, the Court endeavours to deal at the same time with the question of the application of Article 41 of the Convention (award of "just satisfaction" to the applicant). However, this is not always possible and there were 8 separate judgments on this point between 1 November 1998 and 31 July 2001.*

Finland:	254 (250)	Slovakia:	496 (300)
France:	1,594 (1,250)	Slovenia:	146 (106)
Georgia:	14 (5)	Spain:	830 (204)
Germany:	578 (517)	Sweden:	406 (265)
Greece:	161 (136)	Switzerland:	189 (185)
Hungary:	287 (177)	"The former	
Iceland:	9 (10)	Yugoslav Republic	
Ireland:	29 (36)	of Macedonia"	31 (8)
Italy:	2,110 (1,885)	Turkey:	2,667 (2,568)
Latvia:	117 (60)	Ukraine:	795 (396)
Liechtenstein:	2 (2)	United Kingdom:	996 (840)
Lithuania:	153 (91)		

Since the new Court commenced its activities, its "productivity" has significantly increased. In 2000 the number of applications disposed of drew closer to, or in two months (March and September) equalled, the number of applications registered, the monthly averages being 643 disposed of and 874 registered and the annual totals being 7,711 disposed of and 10,486 registered. However, it must be remembered that the Court did not have a clean slate in November 1998, having inherited a legacy from the former Court and Commission (see paragraph 24 above). Moreover, it is not to be expected that the number of applications registered will remain constant, which might enable the Court to achieve "level-pegging".

In the first seven months of 2001, the Court disposed of 5,330 applications (403 judgments covering 523 applications and 4,807 applications declared inadmissible or struck out)[7]; if this rhythm were maintained, the Court would dispose of 9,137 applications in 2001.

H. The itinerary followed by, and time taken to dispose of, applications

30. The itinerary normally followed by applications can be divided into four or possibly five phases.

(a) Pre-judicial phase

As explained in paragraph 23 above, an application will, on receipt, be treated as "provisional" and will not be immediately registered. There will in the first instance be correspondence between the Registry of the Court and the applicant, which may conclude with the registration of the application, this step constituting the official opening of the judicial procedure.

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7 *Where applications have been joined, a decision or judgment may cover more than one application.*

(b) Phase I (first examination)

As soon as the application is registered, the President of one of the four Sections of the Court to which the case is assigned will nominate a member of the Section to act as judge-rapporteur. The latter will thereafter work in close collaboration with the case-processing lawyer in the Registry to whom the case has been allocated. The tasks of the judge-rapporteur cover examination and preparation of the case, channelling it towards a Committee of three judges or a Chamber of seven judges and making proposals as to its disposal. In so doing, he/she may ask the parties to supply documents, information on the facts of the case or any other materials (other than legal arguments) considered necessary.

The judge-rapporteur will seise one of the Committees (at present twelve have been constituted) of the case if it is not complex and appears to be inadmissible de plano. A Committee may by unanimous decision, which is final, declare an application inadmissible. It must be of the view that such a decision can be taken without further examination; in practice a very large number of applications are disposed of in this way (see paragraph 28 above). If the Committee is not unanimous, the case will be referred to a Chamber.

Applications considered by the judge-rapporteur to need closer examination will be directed to a Chamber. It is for the judge-rapporteur to prepare a report summarising the facts of the case, indicating the issues which it raises and making a proposal as to the procedure to be followed (inadmissibility, communication to the respondent Government, questions to the parties, etc.).

(c) Phase II (second examination)

At any stage of the proceedings, a Chamber may – provided that the parties do not object – relinquish jurisdiction in favour of the Grand Chamber of the Court (composed of seventeen judges), if the case raises a serious question affecting the interpretation of the Convention, or where there is a possibility that the Chamber might arrive at a result inconsistent with a previous judgment of the Court.

Unless the Chamber concludes at the outset that the application is inadmissible, it will be communicated to the respondent State for observations within a set time-limit and the applicant will be afforded an opportunity of replying to those observations. After receipt of the observations and reply, the Chamber may decide to hold a hearing, which will usually deal with issues of admissibility and merits. It will then deliver a decision as to the admissibility of the application. A decision that it is inadmissible is final and concludes the case. It falls to the judge-rapporteur to prepare draft decisions on admissibility for consideration by the Chamber.

(d) Phase III (post-admissibility)

Once the application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, will contact the parties with a view to arriving at a friendly settlement, which must be based on respect for human rights as guaranteed by the Convention. Settlement negotiations are confidential and without prejudice.

If no settlement is arrived at, the Chamber will examine the merits of the case, by means of written observations from the parties and, in certain cases, an oral hearing. The judge-rapporteur, assisted by the judge elected in respect of the respondent State (or, in certain cases, a drafting committee), will then submit a draft judgment for adoption and vote by the Chamber.

(e) Phase IV (possible re-hearing by the Grand Chamber)

Judgments by a Chamber may in exceptional cases be the subject of a request by any party to the case that it be referred to the Grand Chamber. Chamber judgments thus become final:

- three months after the date of the judgment, if such reference has not been requested;
- when the parties declare that they will not request reference of the case to the Grand Chamber;
- if such reference has been requested, but a panel of five judges of the Grand Chamber rejects the request.

If the panel accepts the request for a reference (which it must if the case raises a serious question affecting the interpretation or application of the Convention, or a serious issue of general importance), the case will be re-examined by, and determined by a judgment of, the Grand Chamber. To date, eight such requests have been accepted by the panel.

31. The Court considers that, ideally, a case should be finally disposed of within two years. Since this is very difficult to achieve in the current situation, it has set itself a "target for the handling of applications" of three years, comprised of 12 months for each of the phases I, II and III described above. The target is not met if these time-limits have been exceeded, either overall or in any of those three phases.

Roughly 50% of applications are disposed of by the Court within one year of registration, but a considerable number is not terminated within the 3-year target. The latter was true, for example, of about 2,250 of the 19,200 applications pending in September 2001. Some cases are not disposed of until after a period of 4-6 years (for example, about 514 of the 4,719 applications registered in 1997).

Here again, there are differences between the Contracting States. At the end of July 2001, the number of applications per State in which the maximum duration for one of the phases after registration had been exceeded ranged from 1 to 1,459, with 18 States having 100 or more such applications.

I. Classification of judgments and decisions

32. Judgments of the Court on the merits (excluding those delivered by the Grand Chamber) may be classified in four categories on the basis of their legal importance: (1) leading judgments selected for publication in the Reports of Judgments and Decisions; (2) judgments dealing with new questions but not considered of sufficient importance to justify publication; (3) judgments essentially applying standard case-law; (4) straightforward cases concerning the alleged excessive length of domestic proceedings. This classification refers exclusively to legal interest and does not necessarily imply complexity or length.

Judgments delivered in 1999 and 2000 can be classified on this basis as follows:

Judgments	Category 1	Category 2	Category 3	Category 4	Total
1999	58	4	28	87	177
2000	94	35	81	485	695

Decisions by the Court (excluding partial decisions) - i.e. decisions relating to admissibility or striking an application out of the list - can be classified in three categories: (1) decisions included in the monthly case-law reports; (2) other decisions by a Chamber of the Court; (3) decisions by a three-judge Committee of the Court. On this basis, the 1999 and 2000 decisions may be classified as follows:

Decisions	Category 1	Category 2	Category 3	Total
1999	120	1135	2995	4250
2000	142	1225	6155	7522

J. Supervision of the execution of judgments

33. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

Although this text gives no special guidance on the content of the States' undertaking and the role of the Committee of Ministers, these points have been clarified over the years as practice and procedures have developed. Thus, according to the Court's jurisprudence and the Committee's established practice, the obligation to abide by a judgment may require – apart from payment of "just satisfaction" – the adoption by the respondent State of individual measures to erase the consequences for the applicant of the violation(s) found, and of general measures to prevent further similar violations. The Committee of Ministers' supervision of the execution of judgments covers all of these elements (Committee's Rules for the application of Article 46 para. 2 – Rule 3b).

While taking into account the discretion of the respondent States to choose the means whereby they implement individual or general measures, the Committee supervises that the chosen means effectively achieve the result required by the judgment. The collective nature of the Convention system, underlined in the Preamble of the Convention, means that all the States, not just the respondent State, are responsible for ensuring that cases reach a satisfactory outcome.

After having invited the respondent State to inform it of the measures taken in consequence of the judgment, the Committee will first check that any sum awarded to the applicant by the Court by way of "just satisfaction" has been paid and that any other necessary individual measure has been taken. It will then satisfy itself that the requisite general measures have been taken. Finally, it will certify, by adopting a public resolution, that it has exercised its functions under Article 46 para. 2 of the Convention.

The Directorate General of Human Rights assists the Committee of Ministers in carrying out this exercise. In close co-operation with the authorities of the State concerned, the Directorate considers what measures need to be taken in order to comply with the Court's judgment. It also supplies the Committee with opinions and advice on points of law and regarding the experience and practice of the Convention organs.

In the great majority of cases, the Committee is able to fulfil its function under Article 46 without difficulty. In some cases, however, problems do arise. Political motives or strongly held cultural ideas may render difficult or delay the passing of legislation, as may pressures on parliamentary time. Given the increased number and complexity of the execution problems posed, the Committee is more and more facing difficulties in ensuring States' rapid compliance with judgments. Moreover, in recent years some States have challenged, on the occasion of several individual cases, the authority of the Court's judgments with regard either to "just satisfaction" or to specific measures required by the judgments. The Committee's position has, however, always remained that States have, under Article 46 of the Convention, unconditionally undertaken to comply with the judgments of the Court.

If, in case of problems, the confidential scrutiny by the other governments at the Committee's meetings should fail to achieve the necessary result, the Chairman-in-Office of the Committee can be invited to make direct, usually confidential, contacts (letters, meetings, etc.) with the Minister of Foreign Affairs of the respondent State. Furthermore, public interim resolutions may be adopted, notably to convey the Committee's concerns to interested States, organisations and parties and to make relevant suggestions to the authorities of the respondent State. If there are serious obstacles to execution, the Committee will adopt a more strongly worded interim resolution urging the authorities of the respondent State to take the necessary steps in order to ensure that the judgment is complied with. The Rome Ministerial Conference called upon the Committee of Ministers to seek further measures that might be taken in this connection.

According to the Rules for the application of Article 46, the Committee's agenda is public (Rule 1a). Information provided by the State to the Committee of Ministers and the documents relating thereto are also accessible to the public (Rule 5). This Rule has the advantage of ensuring that applicants and their lawyers are kept duly informed about the state of proceedings before the Committee. The Deputies recently decided that, in application of these Rules, the annotated Agenda and Order of Business of each meeting, which contains information on the progress of execution of judgments, would be rendered public a few days after the meeting. According to Article 21 of the Statute of the Council of Europe, the Committee's deliberations remain confidential. On each of the last three points, the Committee may decide otherwise. In addition, the extension of the Court's HUDOC/CMIS system will make it possible for specialists and the public to access information on the execution procedure via the internet.

34. Just as the number of applications filed with the Strasbourg institutions has continued to increase very substantially, so too has the number of cases considered by the Committee of Ministers (24 cases at the February 1992 meeting; 273 at that of September 1995; an average of 800 cases at each of the six 2-day meetings in 2000, with a peak of 1,885 at the meeting of September 2000; an average of 1,000 cases at each of the six 2-day meetings in 2001, with a peak of approximately 2,300 cases to be examined at the meeting to be held in October 2001).

The working methods of the Committee have been under more or less constant review in recent years. The latest reform undertaken in 2000 implied the adoption of new Rules for the application of Article 46 para. 2 and a radically revised documentation system. Emphasis has also been given to the use of written procedures and of internet technology.

In order to save valuable Committee of Ministers' time, cases raising similar problem(s) vis-à-vis a certain State are examined together en bloc and payment control and other routine control (such as publication and dissemination of judgments) are usually dealt with through written procedure, i.e. without any debate. Despite these efforts, it is the general experience that, because of the sheer volume of material to be dealt with, not all cases raising problems, and thus requiring debate, receive as much attention as they might need.

In addition to meeting time, staff resources are another key factor. Although the above reforms and the rationalisation of the Secretariat working methods have enabled time to be saved, the Secretariat's workload continues to increase.

IV. THE IMPLICATIONS OF THE PROBLEM

35. Any assessment of the implications of the problem must depend in the first place on a forecast of the number of applications that will be received by the Court in the future. However, it is extremely difficult to make such a forecast with accuracy. It is conceivable that measures taken at national level might have an effect on the Court's workload. On the other hand, recent years have seen no slacking-off in the number of applications and there are few grounds for supposing that this will occur in the next ten years or so. Experience has shown that publicity given to important cases, coupled with increasing knowledge of the Convention machinery on the part of the legal profession and the population in general, has a "snowball" effect. This point is of particular relevance for those States which have ratified the Convention more recently; the flow of applications from them is not yet very great (4,959 out of the 10,486 applications registered in 2000 concerned countries of Central and Eastern Europe) and in some cases has hardly begun (see table in paragraph 26 above). Nor is there any evidence of a significant falling-off of interest from the older Contracting States.

36. The Evaluation Group is unable to forecast the date of entry into force of Protocol No. 12 to the Convention or its implications for the Court's case-load. However, it is widely accepted that the Protocol, concerning as it does non-discrimination, is bound to generate a substantial volume of business when the time comes. Furthermore, it may well render more complex applications that would have been lodged even without the Protocol's existence.

37. The Council of Europe's Internal Auditor, by taking the number of applications registered for each year and each country over the last ten years and applying statistical methods[8], estimated, in his report to the Secretary General, that the number of applications registered would be 14,655 in 2002 and 20,720 in 2005. In the five-year period from 2000 (when 10,486 applications were registered) to 2005, there would thus be an overall increase of nearly 100%. The Auditor recognised that his projections were conservative; indeed, it can be seen that they fall below the recorded increase for 2000 and the calculated increase for 2001 (see paragraph 25 above).

On the basis of the foregoing and particularly the country-by-country analysis, the Evaluation Group considers that there is no ground for disputing that an increase in the number of registered applications of at least the order indicated by the Auditor will occur.

38. Precise calculations are not easy since applications are not necessarily disposed of in the same year as they are registered. With this reservation, it may be noted that, notwithstanding the increase in the Court's "productivity", in 2000 there remained a "gap" of 2,775, in that 10,486 applications were registered and 7,711 disposed of (see paragraphs 25 and 28 above).

In making its estimates for its staffing needs for 2001, the Court considered that an additional "productivity" gain, of 10%, was possible. In the view of the Internal Auditor, a yet further "productivity" gain, of some 10%, could be achieved by internal means, such as streamlining procedures and working methods, more efficient allocation of tasks and better support to case-processing staff. With an estimated 20% growth in the number of applications and a one-off overall "productivity" gain of 20%, the figures for 2001 would, if the number of case-processing staff were not increased, be 12,583 applications registered and 9,253 disposed of (a "gap" of 3,330).

39. It is abundantly clear from the foregoing that immediate and urgent action is indispensable if the Court is to remain effective. If no steps are taken, the situation will simply deteriorate, with the Court having no prospect of "catching-up" with its ever-increasing arrears of work. It will no longer be able to determine all cases within a reasonable time, its public image will suffer and it will gradually lose credibility. Moreover, constant seeking for greater "productivity" obviously entails the risk that applications will not receive sufficient, or sufficient collective, consideration, to the detriment of the quality of judgments; on this account as well, the credibility and authority of the Court would suffer. Finally, it should be remembered that the problem cannot be seen solely in terms of statistics; the figures quoted say nothing as

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[8] *Internationally accepted statistical methodology provides for forecasting the future value of a parameter (in this case registered applications) by considering the range of its known values. This analysis produces a trend (a curve) for the known values which fits them in the best manner. As a second step, this trend is projected in the future over some period of time (in this case 5 years) to produce the future values of a parameter with the highest degree of reliability.*

to the ratio of "more difficult" to "less difficult" cases, even though it may be that this will remain constant.

40. The foreseeable development of cases from the perspective of execution of judgments is also dramatic. There is every reason to suppose that the predicted increase in the Court's case-load will lead to a significant increase in the number of judgments sent to the Committee of Ministers for supervision of their execution. While in the year 2000, 495 new judgments were sent to the Committee of Ministers, the figure for 2001 had already risen to 650 by the beginning of September 2001. This suggests that the total number for this year will be around 825 judgments. Past, ongoing and future increases in the number of cases registered and processed by the Court will undoubtedly mean that the annual number of new judgments requiring supervision will continue to increase, most probably to around 1,100 in 2002 and possibly reaching some 1,400 in 2003. In terms of the overall number of pending cases, the figures are equally telling: 2,161 in 2000 and already 2,650 at September 2001, suggesting an end-of-year figure of around 2,800 cases. Finally, the workload concerning specifically the supervision of the adoption of general measures is also rising: whereas in 2000 the adoption of 181 general measures had to be supervised, the figure for 2001 is currently around 200. This part of the work is particularly time-consuming.

V. THE EVALUATION GROUP'S APPROACH TO THE PROBLEM

41. In carrying out its mandate, the Evaluation Group has adopted the following basic premises.

(a) There should be no reduction in the substantive rights guaranteed by the Convention and its Protocols.

(b) The right of individual application, which lies at the heart of the Strasbourg machinery, must be preserved in its essence.

(c) The Court must be in a position to dispose of applications within a reasonable time but, at the same time, to maintain the quality and authority of its judgments. The latter point goes not only to the credibility and public image of the Court; judgments also often serve as guidelines in the framing of measures to be taken in the respondent State and in other States too.

42. The Evaluation Group identified five distinct avenues which it should explore. Each of them receives more detailed treatment in Chapters VI to X below; they deal, where appropriate, not only with major measures recommended or endorsed but also with measures which, though not of themselves capable of resolving the problem, are considered useful or desirable and with proposals which the Group felt unable to retain.

43. Those five avenues are the following.

(a) National measures (Chapter VI)

The prime responsibility for securing the rights and freedoms guaranteed by the Convention is cast by Article 1 not on the Court but on the High Contracting Parties themselves. The Court's role is subsidiary. It is therefore logical to deal first with measures to be taken at national level.

(b) The execution of judgments (Chapter VII)

The Evaluation Group moved next to the execution of judgments, for two reasons. Firstly, this avenue is related to the first, involving as it often does a need for general measures to be taken at national level. Secondly, whilst in the majority of cases the supervisory system works well (see paragraph 33 above), this is an area in which a serious defect can be discerned. The Court has had to deal with very many "repetitive" applications, raising an issue identical or very similar to one already determined in a judgment finding a violation of the Convention: the special situation concerning Italy (see paragraph 27 above) is the most striking but not the only illustration. Very many of these "repetitive" applications would never have seen the light of day if general measures to prevent further violations (see paragraph 33 above) had been taken, or been taken more promptly, by the State concerned. Put bluntly, the Strasbourg machinery has failed to function properly in these cases.

(c) Measures to be taken in Strasbourg involving no amendment of the Convention (Chapter VIII)

The Evaluation Group has already emphasised the need for immediate and urgent action (see paragraph 39 above). Its next avenue was accordingly measures that could be taken without the complex and time-consuming process of drafting and ratifying Protocols amending the Convention.

(d) Resources (Chapter IX)

The Evaluation Group then turned to its fourth avenue, on which it had located the question of resources (staffing, accommodation and budget).

(e) Measures involving amendment of the Convention (Chapter X)

Finally, the Evaluation Group has come to the conclusion that further measures, involving amendments to the Convention, are inevitable. The reasons for this conclusion and an indication of the areas to be explored in this connection appear in Chapter X.

VI. NATIONAL MEASURES

44. What measures might be taken at national level to improve the domestic implementation of the Convention was discussed at the Rome Ministerial Conference (see paragraphs 1-2 above) and is the subject of on-going review by the Council of Europe's Steering Committee for Human Rights. The Evaluation Group cannot stress sufficiently the importance of this avenue: the primary duty to protect fundamental rights and freedoms lies with the national courts and authorities and it is at that level that protection can be secured most effectively.

45. Amongst the measures discussed in Rome in this connection, and which the Evaluation Group cannot but endorse, are:

- ensuring the availability of effective domestic remedies to prevent and redress violations of the Convention (including procedures for the proper investigation and establishment of facts);
- the systematic screening of draft legislation and administrative practices, to ensure that they meet Convention standards;
- the introduction or reinforcement of training in human rights for sectors responsible for law enforcement;
- wider dissemination of information concerning the Court and its case-law to national authorities, notably the courts, and in particular the provision of translations of extracts from key Strasbourg judgments;
- ensuring that national courts have the status, authority and independence needed to inspire public confidence;
- the introduction, in accordance with Committee of Ministers' Recommendation (2000)2, of procedures for the re-opening of domestic proceedings after a finding of violation by the Court (an area in which, the Group is pleased to note, legislation has now been adopted or is contemplated in a number of member States).

The last point has affinities with one that the Group identifies later in this report (see paragraph 96 below) as meriting further study, namely the possibility of sending certain applications back to domestic authorities.

Furthermore, the Group would encourage the inclusion of the Convention and its case-law as an item in curricula of university law faculties and professional institutions where this is not already done.

46. To this list the Evaluation Group would add the furnishing to individuals of adequate information and advice concerning the Convention and its procedures. A good number of applications would never reach Strasbourg if applicants were more accurately informed as to the matters falling within the Court's jurisdiction and the conditions on which it can examine complaints. One way of doing this would be to develop, and provide the requisite facilities to, the Council of Europe information and documentation centres that exist in certain Contracting States. The provision of advice through national human rights institutions or legal aid bureaux would be another. What is important is that such information and advice be readily available in all the member States across the board.

National human rights institutions can also play a useful role in advising Governments on issues relating to the compatibility of domestic law and practice with Convention standards.

47. In any event it is clear that the question of national measures must be kept under close and constant scrutiny by the Committee of Ministers and its subordinate bodies. The Court's role must remain subsidiary and it cannot conceivably take over duties and responsibilities incumbent on the Contracting States themselves or act as a first-instance court in respect of a large number of violations of Convention rights alleged to have occurred in a community of almost 800 million individuals. As the Reflection Group set up by the Steering Committee for Human Rights has recognised, there would be merit in also examining, in the context of any reform of the Convention enforcement machinery, ways and means of reinforcing the interaction between the Strasbourg Court and national courts, with a view to improving the operation of the principle of subsidiarity. Moreover, the protection of human rights is not the province of any single body; it requires collective and complementary efforts on the part of all concerned. The Committee of Ministers should strive to promote synergies between the various mechanisms existing within the Council of Europe (the Committee itself, specialised Ministers, the Parliamentary Assembly, the Commissioner for Human Rights, the various political monitoring procedures, the Steering Committees, inter-governmental and co-operation programmes, etc.).

VII. THE EXECUTION OF JUDGMENTS

48. The Evaluation Group has already drawn attention to a defect in the area of execution of the Court's judgments (see paragraph 43 (b) above). It notes that this is an area under on-going examination by the Steering Committee for Human Rights and encourages that Committee to continue to treat this as a priority item, since a court whose judgments remain unexecuted cannot be regarded as "effective".

49. The Steering Committee has already made preliminary observations on certain proposals emanating from the Parliamentary Assembly. Like that Committee, the Evaluation Group has hesitations about some of those proposals.

Thus, the idea that the Committee of Ministers might be empowered to ask the Court for interpretation of a judgment in cases where problems arise as to its execution could result in a blurring of the respective responsibilities of the Court and the Committee of Ministers as assigned by the Convention and draw the Court into an arena outside its purview.

Again, the idea of imposing financial penalties for non-execution of a judgment on a recalcitrant State raises questions as to how such penalties could be calculated. It has to be borne in mind that the implementation of general measures often requires a lengthy legislative process (sometimes bearing on amendments to a whole area of law) that may be interrupted by extraneous events such as elections, changes of government and lack of parliamentary time.

Finally, the idea that the Court should give in its judgments a more precise indication of the measures to be taken by the respondent State runs counter to the notion, often expressed in the Court's case-law, that the State is better placed to assess, and should therefore enjoy freedom in choosing, those measures, provided that they are fully in line with the Court's conclusions and always under supervision of the Committee of Ministers. On this point the Evaluation Group does, however, note a more recent practice of the Court, consisting of indicating (in the context of Article 41 of the Convention, relating to the award of "just satisfaction" to applicants) measures that would constitute restitutio in integrum. Whilst this is a matter entirely for the Court, the Evaluation Group considers that further development of this practice in appropriate cases would be beneficial in the context of the execution of judgments.

50. The Evaluation Group has noted, and welcomes, the fact that steps are now being taken to improve communications (notably by the use of modern technology) between those involved at this stage of the proceedings – the Court, the Committee of Ministers and the Council of Europe's Directorate General of Human Rights. There is clearly merit in, for example, a free flow of information on the progress and nature of cases and in the Court's being kept advised of difficulties encountered in the execution of judgments.

51. In this connection, a particular point arises concerning "repetitive" applications. When transmitting to the Committee of Ministers a judgment finding a violation of the Convention, the Court may be only too well aware that this is the "tip of the iceberg", in that there are pending before it a number of applications raising an identical or very similar issue. The Evaluation Group considers that it would be advisable for special arrangements to be devised for such cases: on being informed by the Registry of the Court of the existence of the pending applications, the Committee of Ministers would deal with the execution of the original judgment by a special procedure allowing for expedited treatment; the pending applications would be "frozen" by the Court for a given period, but subject to regular review, to allow time for the necessary measures to be taken by the respondent State. This procedure would enable the Committee of Ministers to exert special pressure on the State concerned and could reduce the need for the Court to deliver a series of purely repetitive judgments on the merits.

52. Under the Convention, supervision of the execution of judgments is a matter for the Committee of Ministers. It is, however, widely recognised that the Parliamentary Assembly can play a valuable role in this context. The Evaluation Group welcomes the trend in the Assembly to follow this question more closely and its proposal to hold regular debates on the subject. The supervision process may be facilitated and accelerated as a result of contacts made or questions raised in national Parliaments by members of the Assembly and the resultant publicity.

53. More generally, the Evaluation Group can only emphasise the need for the Committee of Ministers to utilise every means at its disposal to ensure the expeditious execution of judgments, in particular to remedy the defect identified by the Group. Additional publicity for difficult cases might be one means; complementary examination of structural problems by the Council of Europe's political and parliamentary monitoring procedures might be another. The Committee could also ensure a greater degree of involvement and international responsibility for difficult cases by designating one of its members as rapporteur to take the lead in pursuing a dialogue with the respondent State. The supervision procedure must have full collective attention from the Committee of Ministers.

The Group would also recall that the Rome Ministerial Conference called upon the Committee of Ministers to "pursue examination of ... possible responses in the event of slowness or negligence in giving effect to a judgment or even non-execution thereof". Discussions on this subject should be rapidly initiated and vigorously pursued by the Committee.

VIII. MEASURES TO BE TAKEN IN STRASBOURG INVOLVING NO AMENDMENT OF THE CONVENTION

54. The Evaluation Group's terms of reference (see paragraph 4 above) enjoin it to have due regard to the constraints resulting from the judicial status of the Court under the Convention. For this reason, the Group has – rather than making specific recommendations – rehearsed and commented on certain proposals, in order to avoid trespassing into matters outside its remit (see especially paragraphs 57-60 and 62 below).

55. There are, to begin with, two suggestions that the Evaluation Group has not felt able to retain.

The first is that legal representation of applicants (which today is not obligatory until an application has been declared admissible unless it is decided to hold a hearing on admissibility) should be compulsory at all stages of the Strasbourg proceedings. The thinking is that this might result in better-prepared applications which would be simpler and quicker to process. However, such a rule could – unless adequate legal aid were available at national level – exclude for financial reasons a number of meritorious applications and constitute an unwarranted impediment to access to the Court.

For broadly similar reasons, the Evaluation Group would exclude any alteration in the current practice according to which before an application is declared admissible an applicant may use any one of the 37 national official languages in the Strasbourg proceedings. After admissibility or in communications and pleadings in respect of a hearing, applicants are required to use one of the Court's two official languages. The utilisation of (at present) 37 languages does create serious difficulties, but reducing that number or obliging applicants to obtain translations could again involve an unwarranted impediment to access to the Court.

56. The Court's internal working methods are kept under constant review and have, since 1999, been the subject of significant improvements.

Thus, in a report which was adopted by the Plenary Court on 6 December 1999, the Court's Working Party on working methods made a large number of recommendations with the objective of facilitating the highest output whilst ensuring that decisions and judgments are of the highest quality. Matters covered included: the assignment of applications to Registry lawyers; setting targets for the handling of applications (as to which, see paragraph 31 above); the format of reports, decisions and judgments; guidelines for the handling of provisional applications; and the procedure in Committee, Chamber and Grand Chamber cases. Of the steps taken in pursuance of these recommendations, the following may be highlighted.

(a) Monitoring of targets, coupled with "country meetings" (analysis of the situation regarding applications concerning a specific respondent State), have enabled adjustments to be made to the allocation of cases within the Court and the Registry.

(b) The pre-judicial phase of proceedings (see paragraphs 23 and 30 (a) above) has been streamlined by the setting of clear guidelines as to the action to be taken by Registry lawyers at that stage and, notably, significantly reducing the amount of correspondence between them and applicants. Registry lawyers thus have more time available to them for the vital task of processing cases for the judicial stage.

(c) Unless special reasons militate otherwise, proposals that applications be declared inadmissible are increasingly referred to Committees (rather than Chambers) in the first instance, thus giving judges more time for the examination of weightier cases.

(d) In cases before Chambers, time is saved by examining the admissibility and the merits of simpler applications at the same time, rather than in two separate phases.

57. The Court's Working Party on working methods and its Reform Committee are currently elaborating detailed proposals concerning, respectively, the procedure applied in the matter of registration of applications on their arrival and the creation of new procedures for the streaming of applications. Discussions on both of these aspects are at an advanced stage. What follows is a summary of the ideas that are on the table and does not necessarily represent the Court's final opinion. It can, however, be stated at the outset that the key to the proposals is the notion that, whilst there should be no restriction on the continuing flow of applications to Strasbourg, the treatment afforded to them by the Court should be more detailed or less detailed, depending on their nature and content.

58. Under the Reform Committee's proposals, the current system whereby, following correspondence with the Registry, applications are registered and then examined by the Court (see paragraphs 23 and 30 (a) above) would be modified. Certain categories of application – the exact list has yet to be determined but would include at least those that are obviously far-fetched and those that do not satisfy the formal conditions set out in the Rules of Court – would no longer be registered. The individual concerned would be notified, with a very brief indication of the reason, that his or her application had not been accepted for registration. These proposals would have to be combined with the Working Party's recommendations on registration policy.

The proposed new streaming would be carried out by a number of designated senior officials of the Registry under the supervision of the Court, which would in all cases retain the power of decision. The officials would be able, in the first place, either to identify an application as falling within a category whose registration can be refused or to certify it as inadmissible on one of the grounds set out in the Convention. Their conclusions would be submitted, in groups of cases, to a Committee of three judges for approval by silent procedure. The officials would also be able to recommend that an application be struck out of the list if its continued examination was no longer justified.

As regards the remaining applications, the officials would, on the basis of standard case-law, certify them either as being admissible and manifestly well-founded or as being prima facie admissible or, alternatively, would recommend that they be communicated to the respondent State concerned. In the latter event the existing procedure before a Chamber of the Court would be followed.

Subject to approval by a judge of the Registry's recommendation, applications certified as admissible and manifestly well-founded would be determined by a Chamber under a summary procedure, unless the Government objected to this procedure within a prescribed period. Applications certified as prima facie admissible would be referred to a Chamber which could declare them admissible under a summary procedure, by means of a decision incorporated in the judgment on the merits; in this case the respondent State would be able to include observations on admissibility in its submissions on the merits. Both forms of summary procedure would afford an opportunity of concluding a friendly settlement.

59. It is considered that these proposals would have the twofold advantage of simplifying the work of the Registry in the initial processing of cases (notably by eliminating a large amount of the correspondence, paper-work and administrative steps involved in current procedures) and of alleviating the burden on judges in the preparatory stages (notably in that a judge-rapporteur would in future be appointed only for communicated applications – cf. paragraph 30 (b) above), thereby leaving them more time to devote to the more important and weighty cases. Moreover, the proposals would not create an extra layer of decision-making or entail any duplication of work. The idea is to attach greater procedural effect to work already carried out by Registry staff so as to make their contribution more time- and cost-effective. The designated senior officials should therefore not have to be replaced. The necessary staffing changes can be effected under the proposals set out in paragraph 70 below.

60. The Evaluation Group, for its part, notes the following particular merits of these proposals:

(a) involving as they do no change to the Convention, they could be put into effect within a relatively short time;

(b) by reducing the number of steps and avoiding duplication of work in the decision-making process, they would save time and effort in the processing of applications, a condition that must be satisfied if measures relating to the streaming of applications are to lead to gains in "productivity" and augment the capacity of the Registry to absorb case-load increases;

(c) they would help to alleviate two major problems facing the Court, namely:

- the need to deal with an ever-increasing mass of applications of which the vast majority raise no or no difficult Convention issue; and

- the need to deal with a large quantity of "repetitive" applications (i.e. cases raising an issue identical or very similar to one already decided and which would in future be handled under a summary procedure);

(d) whilst recognising that some applications warrant a less detailed treatment, they would not impinge on the essence of the right of individual application.

Whilst it is not its task to make recommendations to the Court regarding its internal procedures (see paragraph 54 above), the Evaluation Group sees these proposals as indicating the way forward in the immediate future; it accordingly endorses them and encourages their adoption.

61. The proposals under discussion within the Court incorporate a number of suggestions made in various quarters, for example: that similar applications should be dealt with in groups; that issues concerning admissibility and merits should, whenever possible, be determined together in a single decision; that a special summary procedure be instituted for manifestly well-founded applications; and that an improved procedure be devised for "repetitive" applications. There remain some further points on which the Evaluation Group would comment.

62. Article 38 of the Convention requires the Court, if it declares an application admissible, to "place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter...". This process is conducted in the name of the Court by the Section Registrars. Recent developments suggest that there is now an increasing possibility of disposing of applications by the conclusion of a settlement; indeed, this is adverted to in the proposals now under discussion within the Court (see paragraph 58 in fine above).

The Evaluation Group notes that, in addition to providing Governments with a means of avoiding excessive publicity and applicants with a means of obtaining an immediate and certain result, the conclusion of a friendly settlement can involve substantial budgetary savings for the Court, especially where a fact-finding mission would otherwise have been necessary. The Group thus endorses the suggestion that,

rather than being a mere conduit for the exchange of settlement proposals, the Court should, in appropriate cases, play an even more pro-active role in this respect, with attempts to reach a settlement being pursued at an earlier stage in the proceedings than is sometimes now the case (see paragraph 30 (d) above). Consideration might be given to setting up a special unit within the Registry to assist in the settlement process.

The Committee of Ministers – which would, of course, have to retain its power to supervise the implementation of settlements – might consider the adoption of a Resolution or Recommendation encouraging Governments to conclude settlements and to co-operate with the Court to that end.

Incentives for applicants to settle might be reinforced if there were a practice on the part of the Court of depriving them – in its awards of "just satisfaction" – of part of their costs in cases where they had declined a settlement offer deemed by the Court to be reasonable. Alternatively, the Court could dispense with the applicant's consent in striking an application out of the list if, for example, his/her refusal to accept a settlement offer was unreasonable.

63. As recorded in paragraph 22 above, the Court on occasion finds itself obliged to undertake fact-finding missions in the respondent State concerned. This is particularly so when no proper investigation has been conducted or no effective remedy is available at domestic level. This task, which is time-consuming, expensive and – in view of the time-lag involved – does not always succeed in establishing the facts to the required standard of proof.

To some extent, the Court has itself avoided the need to embark on fact-finding missions with their attendant problems by holding in its case-law that procedural deficiencies, such as lack of investigation or of a remedy, may of themselves constitute a violation of the Convention. On this issue, the Evaluation Group would refer back to what it has said in paragraph 45 above on national measures. It notes that in any event the Court restricts its fact-finding to exceptional cases.

64. A key element in the Court's ability to cope with increases in case-load and to process cases efficiently and expeditiously will be the effective use it makes of the latest developments in information technology. The Court's current information technology system and programme are described in paragraph 20 above and in Appendix II. The Internal Auditor noted in his report that the existing facilities enabled the Court to respond in a satisfactory way to its current needs with regard to the treatment of cases and the provision of information to the public. This is however an area in which rapid technological evolution may provide new solutions which open up new perspectives of productivity and efficiency. The Court must therefore be in a position to follow and where appropriate implement such innovations. It will need to maintain a forward-looking information technology policy, whose long-term funding must be guaranteed.

65. The Evaluation Group favours the proposal that the Court should continue to prepare (possibly in a revised format) an annual report on its organisation and activities. This would, in particular, highlight case-law trends and areas where problems have arisen. The report would be available to the public at large and would be of particular utility for the Committee of Ministers, the Parliamentary Assembly, domestic courts and authorities and practising lawyers. It could assist all States, including those not directly concerned by a judgment, in bringing legislation and practices into line with the Court's case-law. The impact of the report would be enhanced if translations could be made available.

66. Some additional suggestions that would not involve a modification of the Convention (relating to "standby" judges and the constitution of a Fifth Section of the Court) are dealt with in paragraph 87 below.

67. On a more general point, the Evaluation Group is aware that certain issues relating to the institutional status of the Court within the Council of Europe remain outstanding. The Group recommends that these issues be discussed and determined urgently.

IX. RESOURCES

68. Any consideration of the Court's resource needs must, in the view of the Evaluation Group, be prefaced by two general remarks.

In the first place, the uncertainties surrounding a forecast of the Court's future workload (see paragraphs 35-37 above) rule out any absolute prediction as to its future resource needs. Short of providing that no more than a given number of applications will be processed each year (an idea too arbitrary and inequitable to warrant mention), no guarantee of stability can be given; the best that can be offered is an indication of probabilities.

Secondly, the Group recognises that resources cannot be increased ad infinitum: quite apart from national budgetary constraints, the outcome would be an unwieldy and unmanageable institution, lacking in particular the necessary efficiency and internal cohesion.

Staffing

69. The current position is that delays in processing applications derive not so much from a shortage of time on the part of the judges as from difficulties encountered by the Registry in preparing files for judicial consideration: the mass of material is simply so great that its processing cannot proceed rapidly enough. The same point was taken by the Council of Europe's Internal Auditor in his report to the Secretary General, with reference to material on the "productivity" of certain other courts.

The issue of staffing was reviewed by the Internal Auditor in that report. He estimated, in the light of his predictions as to the future case-load (see paragraph 37 above) and taking into account the likely gain in "productivity" (see paragraph 38 above), that by 2005 the Court would need at least 189 lawyers and 95 secretaries as case-processing staff. According to information provided by the Court, provision is made in the proposed draft budget for 2002, prepared by the Council of Europe Administration, for 138 lawyers and 49 secretaries to work in case-processing units. Of these 138 lawyers and 49 secretaries, 45 lawyers and 15 secretaries were initially financed under the scheme proposed by the ad hoc Working Party (see paragraph 3 above). Under the Committee of Ministers' decision of December 2000, 25 of these 45 lawyers and 10 of the 15 secretaries were to work on "backlog" cases[9]. Consequently, the 35 persons concerned cannot be included in the calculation of the number of case-processing staff needed to deal with new cases, since they will, at least in the foreseeable future, have to continue to deal with the accumulating backlog of cases.

It follows that in order to achieve the target of 189 lawyers and 95 secretaries, additional financing is required for 76 lawyers and 56 secretaries.

	Case-processing staff	Lawyers	Secretaries	TOTAL
1	Target 2005	189	95	284
2	Total in draft budget 2002	138	49	187
3	Backlog 2002	25	10	35
4	Total in draft budget 2002 (minus backlog)	113	39	152
5	Additional needs	76	56	132

While the scale of the problem for the Court demands immediate measures, the Evaluation Group recognises the formidable management and administrative challenges which the recruitment over one year of such a sizeable increase in case-processing staff would present. The number of lawyer posts recommended above by the Group is equivalent to around 50% of the number of posts provided for in the 2002 draft budget. The absorption over a short period of such a significant number of new staff would inevitably impact negatively on the capacity of the Registry, not least by requiring current staff to devote time to training and supervision, thereby adding to short-term case-processing delays. The current absence of a dedicated human resources function within the Court is a further factor.

9 *See documents GT-BC-2001(2000)1, CM/Del/Dec(2000)733/1.6 and CM(2001)24 Cor.*

For these reasons, the Evaluation Group recommends that the implementation of this recruitment be staggered over the period 2003-2005. It points out that this graduated approach would allow the Court annually to review its operations and to take account of relevant changes in conditions such as:

- changes in the levels of incoming cases;
- the volume of the continuing backlog;
- the impact on productivity of the internal measures being taken by the Court (see paragraphs 57-58 above) to improve its effectiveness.

Such reviews could also benefit from contacts between the Court and those domestic courts in which significant administrative and case-processing reforms have recently been successfully completed.

It goes without saying that a graduated approach to recruitment should not be interpreted as putting into question the recommended commitment of the Committee of Ministers to provide the required resources up to the limits set out above.

70. The Evaluation Group also recognises, as did the Internal Auditor, that the Court has unmet staffing requirements in areas other than case-processing.

In the first place, bearing in mind the increase in the size of the Registry, both past and contemplated, there is a need to reinforce its management structures, especially at a time when changes are being made to internal procedures. If the Registry establishment is to grow to some 400 persons, it clearly requires the concomitant support and general services and should not have, as at present, to "borrow" valuable case-processing staff to carry out administrative duties.

In the second place, the current under-staffing of the Court's Research Unit is a serious impediment to the individual and collective work of the judges. The Evaluation Group shares the opinion of the Internal Auditor that resources should be devoted to reinforcing this Unit and to endowing the Court with improved library facilities.

The Internal Auditor recommended the creation of 8 additional posts for the above-mentioned purposes. The Group agrees that this recommendation meets the Court's immediate needs for support staff. In order that the increase in case-processing staff may proceed from 2003, it is vital that three of these management posts should be made available in 2002 so as to provide proper supervision for new staff, in particular as regards human resources management and training. Similarly, two senior posts (Deputy Section Registrar) are required from 2002 to implement the scheme for internal streaming (see paragraph 58 above). The remaining three posts should be created as from 2003.

71. The Council of Europe's Finance Division has calculated that, assuming the staffing proposals set out in paragraphs 69 and 70 above are fully implemented, their overall annual budgetary cost by 2005/2006 would be approximately € 7.6 m. This figure, which excludes non-recurrent recruitment expenditure or any adjustment for inflation but includes provision for a proportion of permanent posts, would represent 4.5% of the draft ordinary budget for the Council of Europe for 2002.

72. To the foregoing there should be added the cost of the Court's investment in information technology. The Evaluation Group considers it imperative that adequate financial resources be provided to permit full implementation of the programme referred to in paragraph 64 above.

73. A further point concerning staffing resources remains. Within the Directorate General of Human Rights, the Department for the execution of judgments currently comprises 5 case-processing lawyers (the post of one of which is temporary), plus two seconded lawyers and two administrative assistants. The Head of Department and the principal administrator are not directly involved in case-processing; their duties concern management, quality control, contacts with delegations concerned, presentation of cases to the Ministers' Deputies, etc. The Evaluation Group has already drawn attention to the considerable ongoing and foreseeable increases of the execution case-load, in terms of cases examined by the Committee of Ministers at each meeting (see paragraph 34 above), the annual number of new cases requiring supervision of execution and the number of pending cases and of general measures under supervision (see paragraph 40 above). It should also be taken into account that the spread of the legal systems involved is now much wider than in the past.

The Evaluation Group therefore considers that there is a case for urgent reinforcement of this Department. Given that the case-load and staffing situation in 2000 (495 new supervision cases; 4 case-processing lawyers) was such that the backlog remained modest for most of that year, the Group takes as a basis that a case-processing lawyer in the Department should on average be able to handle 125 new cases per year.[10] The Group accordingly recommends a staffing increase of three lawyers and one administrative support staff member in the short term.

Further staffing increases in relation to the execution of judgments are likely to be necessary both in the Directorate General of Human Rights and the Secretariat of the Committee of Ministers. In order to assess these needs, the Group considers that a detailed analysis of current procedures and working methods and of the impact of measures taken by the Court should be carried out. This could be achieved by an audit.

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10 *It should be noted that each lawyer also handles a large number of pending cases.*

Accommodation

74 The current situation regarding the utilisation of the Human Rights Building and the need to find additional space for the Court is referred to in paragraph 19 above.

Bearing in mind that, in the estimate of the Council of Europe's Committee of Experts on Buildings, six years would be required to plan and complete a new building (capable of housing, inter alia, the Directorate General of Human Rights), the Evaluation Group finds it absolutely imperative that a decision on the subject of such a building be taken by the Committee of Ministers before the end of 2001.

The departure of the Directorate General to the new premises would make available space for the additional staff for the Court mentioned in paragraphs 69 and 70 above to be housed in the Human Rights Building. Having regard to its discussions with representatives of the Court and the Council of Europe's Directorate General of Administration and Logistics, the Evaluation Group notes that – on the assumption that the decision to construct the new building is taken – an interim solution, involving a strictly provisional departure from the usual accommodation norms until that building is completed, could be found and accepted, so that the recruitment of the additional staff, which will be staggered, could proceed.

Budget and financing

75. Over and above the question of the Court's staffing and accommodation needs, there remain a number of wider issues relating to its budget.

76. The Evaluation Group does not favour certain proposals the thrust of which would be to finance the Court in part by some form of charge or fee to be levied on "best-customer" States or individual applicants. This could entail additional costs falling on those least able to meet them and would sit ill with the collective nature of the enforcement machinery and the fact that a commitment to ratification of the Convention is a condition for accession to the Council of Europe (see paragraph 15 above). The Group notes in this connection that the Committee of Ministers has set up a Working Group to examine the revision of the method of calculating the scales of member States' contributions to the Council of Europe's ordinary budget.

77. At present, the Court's budget (saving special derogation) is comprised within the ceiling set for the Council of Europe's ordinary budget (see paragraph 17 above). Such an arrangement is totally inappropriate for activities such as those of the Court which cannot be expanded or contracted at will, but depend on the uncontrollable factor of the inflow of applications. Furthermore, the effect of the current system is that an increase in the Court's resources reduces pro tanto the resources available for other activities of the Council of Europe. Consequently, as the Internal Auditor pointed out, the Court's budgetary needs will slowly but steadily absorb the Council's ordinary budget. The short-sightedness of such an arrangement becomes only too apparent when it is borne in mind that the Council's other activities include assistance to member States in achieving the overall aims of the Convention and that, if those aims are achieved, the workload of the Court will diminish.

By definition the increased resources required to ensure the future effectiveness of the Court (see paragraphs 69-71 above) cannot be provided from within a Council of Europe budget which is determined on the basis of the current arrangement. Consequently, the Evaluation Group concludes that at least increases in the budget of the Court should be treated separately and without regard to the bases applied in fixing the Council of Europe's ordinary budget. In the Group's view, the same should apply to increases in resources related to the supervision of the execution of judgments.

78. It has been suggested that steps should be taken to ensure that each member State pays at least a minimum budgetary contribution, sufficient to meet the expenses that derive from the sole fact of being party to the Convention (cf. paragraph 16 above). The Evaluation Group considers that this point should be discussed in the Working Group set up to examine the scales of contributions (see paragraph 76 above).

Finally, an unsatisfactory feature of current arrangements is that the Court's budget is annualised (see paragraph 17 above). The Group considers that, in order to avoid recurrent annual crises, a system should be devised whereby two- or three-year programmes are drawn up on the basis of an analysis of trends at a given point of time. This should also apply to appropriations related to the supervision of the execution of judgments.

79. At the risk of stating the obvious, the Evaluation Group would emphasise that the question of resources is an urgent one, requiring immediate action. A policy of awaiting developments in the Court's case-load or the results of reforms envisaged would be misguided.

X. MEASURES INVOLVING AMENDMENT OF THE CONVENTION[11]

80. The Evaluation Group has noted in paragraph 38 above that, on the basis of predictions concerning the Court's case-load and gains in its "productivity", in 2001 12,583 applications would be registered and 9,253 disposed of. This calculation did not take into account any increase in the number of case-processing staff or the "productivity" gain that would result from implementation of the internal measures described in paragraphs 57-58 above.

In fact, the Group has concluded in paragraph 69 above that a staffing increase is required that would bring the number of case-processing lawyers in the Registry to 189.

The Internal Auditor set an average figure of 110 applications per year to be disposed of by each lawyer, including trainees (the actual average figure for 2000 being 90 applications per lawyer, excluding trainees). The effect of the internal measures, which would take time to implement, cannot be predicted with any certainty. However, even if it is assumed that they would result in a further "productivity" gain of 25%, the Court would still reach saturation point within less than ten years, as the following calculation reveals.

With that assumed 25% gain, the average case-handling capacity per lawyer would increase to 137.5. On this basis, the Court, with its staffing increase, would have the capacity to dispose of 25,987 (189 x 137.5) applications per year. The Internal Auditor estimated that in 2005 20,720 applications would be registered, so that in that year disposals could exceed registrations by 5,267 (25,987 - 20,720). However, applying on a linear basis the nearly 100% increase in registered applications he estimated for the period from 2000 to 2005 (see paragraph 37 above), by 2007 the number of registrations (29,008) would already once again exceed the disposal capacity, by 3,021. And the situation would continue to deteriorate in the subsequent years (for example, 41,440 registrations in 2010 as against the disposal capacity of 25,987).

81. The picture given by these figures may be too pessimistic, in that they assume a constant rate of growth in registered applications. If, however, the figures resulting from the purely mathematical (and necessarily somewhat speculative) calculations set out in the preceding paragraph were borne out, further increases in "productivity" and in staffing would be required if the Court were not to suffocate. Yet the Group has already pointed to the risks involved in constant seeking for greater "productivity" and to the impossibility of increasing resources ad infinitum (see paragraphs 39 and 68 in fine above).

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[11] *Mr Wildhaber wishes to stress that this Chapter of the report reflects his personal views and not those of the Court, which has not yet discussed amendments to the Convention in plenary session.*

In any event, even if resources could be increased indefinitely, saturation point would be reached in the near future, particularly in the sense that there must be some limit on the number of cases which 41 (or even 43) judges can examine in depth each year if quality is not to suffer. There is thus a need, in addition to the procedural streamlining and resource increases discussed in preceding Chapters of this report, for yet further measures to reduce the workload, to expedite the handling of applications that do not warrant detailed treatment and to leave the judges with sufficient time to devote to those that do. The immediate measures under discussion within the Court take to the limit what can be done without touching the Convention. The Evaluation Group has thus examined finally measures involving amendment of that instrument.

82. From the many proposals contained in the materials available to it, the Group will, before turning to the more radical ones, deal first with a number that it considers should not be retained, and then with some – on more general issues – that it favours.

Regional tribunals

83. It has been suggested that with a view to alleviating the case-load problems, regional human rights tribunals might be created throughout Europe, with the Strasbourg court becoming a tribunal of last instance. Quite apart from the expense which this would involve, the Evaluation Group is not attracted by this solution: it carries a risk of diverging standards and case-law, whereas the essence of the Convention system is that uniform and coherent standards, collectively set and enforced, should obtain throughout the Contracting States (see the Preface to this report). A much better approach is to improve the role played by domestic courts as "Convention courts" of first instance (see Chapter VI above).

Preliminary rulings and advisory opinions

84. Neither does the Evaluation Group favour suggestions that the Court should be empowered to give preliminary rulings on Convention issues at the request of national courts (in a procedure akin to that utilised by the Court of Justice of the European Communities) or that its competence to give advisory opinions (Articles 47-49 of the Convention) should be expanded.

These measures might reduce to some extent the flow of individual applications to Strasbourg, but they would require far more detailed study before they could be implemented, notably as regards their relationship to the Court's existing jurisdiction. Above all, priority must, in the Group's view, be given to resolving the current workload problems: the Court simply does not have the capacity at the present time to take on the extra duties which these suggestions would involve.

Conferment of powers of decision on Registry officials

85. The Evaluation Group sees no objection to conferring powers of decision in certain procedural matters to senior officials of the Registry as such, in order to lighten the judges' workload. However, there is general agreement that such powers should not extend to substantive issues. This would be contrary to the principle, enshrined in the Convention, of a judicial decision and it would scarcely be likely to meet with public approval. The position would, however, be otherwise if certain powers of decision were conferred on persons who, though previously members of the Registry establishment, had been duly invested with judicial status.

Reduction of the size of Committees and/or Chambers

86. In the opinion of the Evaluation Group, proposals to reduce the size of Committees to below three judges or of Chambers to below seven judges would not, taken in isolation, be of great assistance at the present stage. As evidenced by the number of applications disposed of by this means (see paragraph 28 above), the Committee system works well: as already recorded, it is Registry, more than judicial, time that is currently lacking. Decreasing the size of Chambers would make it difficult to achieve the requisite balance between members (geographical origin, gender and legal system of origin). However, some changes in this area might be contemplated in the context of a more radical change to the structure of the Strasbourg machinery (see paragraph 98 below); they could very well introduce a valuable element of flexibility in the light of the nature and complexity of the case under examination.

Additional judges

87. Neither does the Evaluation Group consider that a solution lies in an increase in the number of full-time elected judges on the Court. Once again, the greatest problem is not a lack of judicial time, and the more the number of judges, the more the risk of a lack of cohesion in case-law. Moreover, such an increase would in all probability mean a doubling of the number of elected judges, with the consequent financial implications.

More interesting is the suggestion, which the Court currently has under consideration and which the Evaluation Group considers should be pursued, of having recourse to "standby" judges; subject to satisfactory procedures concerning their nomination, their services could be prayed in aid when, for example, the case-load from a given State placed an excessive burden on the judge elected in respect of that State. A further measure that could, in the Group's view, be usefully explored is the constitution within the Court, once the number of Contracting States so permits, of an additional, fifth Section (Sections currently being composed of 10 or 11 judges).

Both of the latter measures could be implemented without modifying the Convention but, it is important to note, neither of them would resolve the case-processing problems faced by the Registry.

88. In discussions on reform, hesitations are sometimes expressed about certain proposals because they would necessitate resort to the time-consuming process of drafting and ratifying Protocols to the Convention.

Although this would not resolve the case-load problems, the Evaluation Group sees considerable merit in the suggestion that certain matters now dealt with in the Convention itself be transferred to a separate instrument (possibly a Statute of the Court) which could be amended by a simpler procedure (for example, a Resolution of the Committee of Ministers adopted with the Court's agreement). This instrument would not affect basic Convention principles but would be confined to questions of lesser importance, such as the number of members of a Chamber of the Court. The Court's regulatory competence concerning matters dealt with in the Rules of Court would, moreover, not be reduced.

89. A more important question, relating to the effectiveness of the Court as a judicial institution rather than its case-load problems, concerns the term of office of elected judges.

In its own case-law, the Court requires of national courts a high standard of objective independence and impartiality, extending also to appearances. The Group recalls in this context that the principles contained in Committee of Ministers Recommendation No. R(94)12 on the independence, efficiency and role of judges hold good for members of the Strasbourg Court as well. The Evaluation Group considers that the Convention should be amended so as to lay down that judges of the Court are elected for a single, fixed term, without possibility of re-election. This term should not be less than nine years. The effect of these changes would be to ensure continuity within the Court and, moreover, to offer a further guarantee of the Court's independence.

90. Turning to more radical measures and bearing in mind that the Court's "productivity" cannot be increased ad infinitum if the quality of its judgments is to be maintained, the Evaluation Group has looked first at possible modifications to the Convention that would reduce the workload by modulating the treatment afforded to applications and reserving full judicial treatment for applications that warrant it.

91. The most far-reaching modification of this kind would be to provide (without more) that the Court should enjoy an unfettered discretion as to which applications it will accept for examination. Whilst such an arrangement exists in certain countries, the Evaluation Group does not consider it appropriate for Strasbourg. In the countries concerned, the court enjoying such a discretion is the tip of a pyramid of courts of varying levels. Moreover, practitioners and the public would be left with no guidance as to which applications would or would not be accepted for examination and there would be a risk of the Court's laying itself open to charges of inconsistency, if not arbitrariness.

92. Another possibility would be to revise the existing admissibility criteria set forth in Article 35 of the Convention. Whilst there might be scope for some such revision (for example, the "manifestly ill-founded" criterion has been applied to applications that are ill-founded but perhaps not "manifestly" so), this would not go far enough. What is required is a means of excluding from detailed treatment by the Court not only applications having no prospects of success but also those which, despite their having such prospects, raise an issue that is, in the view of the Court, of such minor or secondary importance that they do not warrant such treatment.

To the objection that such a solution would deprive some victims of violation of the Convention of protection, the Evaluation Group would reiterate that the primary responsibility for applying Convention standards lies with domestic courts and authorities. More basically, the Group would reply that the point has been reached at which a difficult choice has to be made: either the Court continues to attempt to deal in the same way with all the applications that arrive (in which event it will slowly sink), or it reserves detailed treatment for those cases which, in the light of its overall object and purpose (see the Preface to this report), warrant such attention. Not without some soul-searching but nevertheless unreservedly, the Group opts for the second alternative.

93. The Reflection Group set up by the Steering Committee for Human Rights proposed that the Court might be given wider possibilities to reject applications, by raising the admissibility threshold through the introduction of additional or reformulated admissibility criteria. Concurring with this approach, the Evaluation Group has come to the view that a provision should be inserted in the Convention that would, in essence, empower the Court to decline to examine in detail applications which raise no substantial issue under the Convention. The Group does not see it as its task to formulate such a provision, notably since this would require detailed study by the appropriate Council of Europe bodies in conjunction with the Court, with which outside bodies should be associated. A number of points should, however, be made.

94. Firstly, whatever wording is adopted, it is clear that the interpretation of such a provision will have to be worked out by the Court over a period of time. It would seem appropriate that in determining what is or is not "substantial", the Court should have regard, inter alia, to the situation obtaining in the respondent State and the extent to which effective domestic remedies are available.

95. Secondly, this proposal should not be seen as a panacea for the workload problems. Whilst the drafting of judgments and the preparatory work involved therein would be eliminated for cases not accepted for detailed treatment, each and every application would still have to be studied to determine whether it raised a substantial Convention issue. The need for adequate case-processing staff within the Registry would thus remain even in those cases, though their tasks would be reduced.

96. Finally, this solution should not be seen as a restriction on the right of individual application: individuals would still be completely free to submit applications to Strasbourg, which would all be examined and receive a considered response. Nevertheless, a blind eye cannot be turned to the question of what happens to the author of an application that is not accepted for detailed treatment. The Evaluation Group considers that this point should be studied concurrently with the drafting of the new provision, with a view to devising a mechanism whereby States would agree that such an application be remitted back to their authorities for reconsideration: this would be of particular value in those cases where no effective domestic remedy was originally available.

In similar vein, procedures might also be established whereby States would agree that, where an application has been certified as admissible and manifestly well-founded in accordance with the proposals currently under discussion within the Court (see paragraph 58 above), the individual concerned would be entitled to obtain redress from a designated national authority.

97. Estimating the effects in terms of "productivity" of the exclusion of "no-substantial-issue" applications is even more difficult than making the other forecasts looked at by the Evaluation Group. This measure would undoubtedly alleviate the problem, but, though much depends on the manner in which it is applied, it seems unlikely that it could achieve the "productivity" gain that would be needed to cope with the potential case-load situation in the period 2006-2010 (see paragraph 80 above). The Group accordingly considers that yet more radical changes are called for.

98. In the Group's opinion, a vital consideration must be to ensure that judges are left with sufficient time to devote to what have been called "constitutional judgments", i.e. fully reasoned and authoritative judgments in cases which raise substantial or new and complex issues of human rights law, are of particular significance for the State concerned or involve allegations of serious human rights violations and which warrant a full process of considered adjudication. A way of achieving this would be to establish a new mechanism in the operation of which the existing judges would not be involved. Such a mechanism should, in the Group's view, be a part of, and not separate from, the Court, as reversion to the two-institution structure that existed prior to Protocol No. 11 would be a step backwards and would carry a risk of more delays and costs. In short, the Court would consist of two divisions, the first composed of elected judges and the second – with responsibility for preliminary examination of applications – composed of appropriately appointed independent and impartial persons invested with judicial status (who would be designated as "assessors" or some other suitable title).

Whilst the new division would doubtless need to sit full-time, a number of points would require detailed study by the appropriate bodies of the Council of Europe in conjunction with the Court, with which, again, appropriate outside bodies should be associated. They include:

(a) the number and qualifications of assessors and the manner of their appointment;

(b) the definition of the role of the assessors: for example whether they would take all admissibility decisions (or only decisions of non-admissibility) and whether they would have any role in fact-finding;

(c) means of reconciling the need to make the best use of judicial time and the need for the assessors to take over, without duplication of work, sufficient of the tasks now handled by the Registry for the creation of the new division to alleviate significantly the shortage of case-processing capacity within the Registry: on this point the remarks in paragraph 60(b) above apply, mutatis mutandis;

(d) the more political issue of whether, under such an arrangement, the first division of the Court should be composed of a number of judges equal to or less than the number of Contracting States and whether that division should sit full-time.

This study should, of course, take account of the experience gained as a result of implementation of the internal measures currently under consideration within the Court (see paragraphs 57-58 above). It should also bear in mind the need not to impinge upon the essence of the right of individual application.

XI. CONCLUSIONS AND RECOMMENDATIONS

99. The Evaluation Group has found no single "miracle" solution. The situation currently faced by the Court is so serious that, if it is to remain effective and continue to fulfil its object and purpose (see the Preface to this report) and serve as the final arbiter in the protection, maintenance and development of common human rights standards throughout Europe, action is needed on several fronts.

In the immediate, measures internal to the Court should be taken without delay and, at the same time, more fundamental reforms involving amendment of the Convention must be prepared forthwith. In addition, constant efforts to improve the domestic implementation of the Convention and the system for supervising the execution of the Court's judgments are called for. Moreover, in view of the member States' commitment to the cause of promotion of human rights, they must recognise and satisfy promptly the Court's present and future needs in the matter of resources. However, the Council of Europe should not allow development and expansion of the Convention system of human rights protection to weaken the Organisation as a whole through progressive diversion of financing from other activities to the Court.

100. Having regard to the foregoing and for the reasons developed in this report, the Evaluation Group recommends that the Committee of Ministers:

A. As regards national measures

1. keep under close and constant scrutiny, in co-operation with all concerned, the question of national measures to improve the domestic implementation of the Convention, such as those discussed at the Rome Ministerial Conference (see paragraphs 45 and 47);
2. encourage member States to promote the inclusion of the Convention and its case-law as an item in curricula of university law faculties and professional institutions (see paragraph 45);
3. invite member States to improve the provision to potential applicants of information and advice concerning the Convention and its procedures, and examine enhancing the role of the Council of Europe information and documentation centres in this area (see paragraph 46);
4. give instructions to carry out a feasibility study on means of reinforcing interaction between the Strasbourg Court and national courts (see paragraph 47);

B. As regards execution of the Court's judgments

5. utilise every means at its disposal to ensure the expeditious execution of judgments of the Court (see paragraph 53);
6. initiate rapidly and pursue vigorously the examination of further responses to non-execution or slow execution of judgments, as recommended by the Rome Ministerial Conference (see paragraph 53);
7. contribute to the improvement of communications between all those concerned in this area (see paragraph 50);
8. set up, in conjunction with the Court, a special procedure for the handling of repetitive applications (see paragraph 51);
9. pursue dialogue with the Parliamentary Assembly in this matter;

C. As regards immediate measures to be taken in Strasbourg

10. take note of and encourage the proposals currently under discussion within the Court (see paragraphs 57-58 above) as indicating the way forward in the immediate future;
11. consider the adoption of a Resolution or Recommendation encouraging the conclusion of friendly settlements (see paragraph 62);

D. As regards resources

12. provide for the Court the additional staffing resources indicated in paragraphs 69-71;
13. provide adequate financial resources to permit full implementation of the Court's information technology programme (see paragraphs 64 and 72 and Appendix II to this report);
14. provide for the relevant Department of the Directorate General of Human Rights the additional staffing resources in the short term indicated in paragraph 73;
15. consider the need for further reinforcing the relevant staff of the Directorate General and the Secretariat of the Committee of Ministers on the basis of an audit (see paragraph 73);
16. take before the end of 2001 a decision on the construction of an additional building for the Council of Europe (see paragraph 74);

17. treat separately, and without regard to the bases applied in fixing the Council of Europe's ordinary budget, increases in the budget of the Court, and ensure that the financing of those increases does not reduce the resources available for the other activities of the Council of Europe (see paragraph 77);

18. note that no guarantee can be given that the needs of the Court will stabilise and devise a system whereby budgets for the Court would be programmed on a two- or three-year basis (see paragraphs 68 and 78);

19. adopt, for increases in resources and the programming of appropriations related to supervision of the execution of the Court's judgments, the same approaches as those recommended, in points 17 and 18 above, for the Court (see paragraphs 77 and 78);

E. As regards amendment of the Convention

20. give instructions to the appropriate bodies with a view to preparing a draft Protocol to the Convention which would:

(a) empower the Court to decline to examine in detail applications raising no substantial issue under the Convention (see paragraphs 92-96); work on this point should also seek to devise a mechanism whereby certain applications might be remitted back to domestic authorities (see paragraph 96);

(b) provide that judges of the Court are elected for a single, fixed term of not less than nine years, without possibility of re-election (see paragraph 89); and

(c) transfer certain matters of lesser importance now dealt with in the Convention to a separate instrument capable of amendment by a simpler procedure (see paragraph 88);

21. give instructions for a feasibility study to be carried out by the appropriate bodies, in consultation with the Court and in parallel with the work referred to at point 20 above, into the creation within the Court of a new and separate division for the preliminary examination of applications (see paragraph 98);

F. In general

22. review regularly the progress achieved in the implementation of the foregoing recommendations and other relevant questions affecting the Court through the mechanism of the Ministers' Deputies' Liaison Committee with the Court.

APPENDICES

APPENDIX I

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

STATISTIQUES POUR LA PERIODE DU 01.11.1998 AU 31.07.2001
STATISTICS FOR THE PERIOD 01.11.1998 TO 31.07.2001

Etat *State*	Arrêts *Judgments*	Arrêts (définitif-après renvoi devant la Grande Chambre) *Judgments (final-after referral to Grand Chamber)*	Arrêts (satisfaction équitable) *Judgments (just satisfaction)*	Arrêts (règlement amiable) *Judgments (friendly settlements)*	Arrêts (radiation) *Judgments (striking out)*	Arrêts (exceptions préliminaires) Judgments (preliminiary objections)	Arrêts (interprétation) Judgments (interpretation)	Arrêts (révision) Judgments (revision)
Albania/*Albanie*	-	-	-	-	-	-	-	-
Andorra/*Andorre*	-	-	-	1	-	-	-	-
Austria/*Autriche*	28	-	-	7	-	-	-	-
Belgium/*Belgique*	8	-	-	1	-	-	-	-
Bulgaria/*Bulgarie*	5	-	-	1	-	-	-	-
Croatia/*Croatie*	3	-	-	-	-	-	-	-
Cyprus/*Chypre*	5	-	-	1	-	-	-	-
Denmark/*Danemark*	1	-	-	5	-	-	-	-
Estonia/*Estonie*	1	-	-	1	-	-	-	-
Finland/*Finlande*	8	-	-	2	1	-	-	-
France/*France*	106	-	-	19	3	-	-	-
Georgia/*Georgie*	-	-	-	-	-	-	-	-
Germany/*Allemagne*	13	-	-	-	1	-	-	-
Greece/*Grèce*	32	-	2	6	1	-	-	-
Hungary/*Hongrie*	4	-	-	-	1	-	-	-
Iceland/*Islande*	-	-	-	2	-	-	-	-
Ireland/*Irlande*	2	-	-	1	-	-	-	-
Italy/*Italie*	434	-	1	215	-	-	-	1
Latvia/*Lettonie*	-	-	-	-	-	-	-	-
Liechtenstein/*Liechtenstein*	1	-	-	-	-	-	-	-
Lithuania/*Lituanie*	5	-	-	1	-	-	-	-
Luxembourg/*Luxembourg*	3	-	-	-	-	-	-	-

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

STATISTIQUES POUR LA PERIODE DU 01.11.1998 AU 31.07.2001
STATISTICS FOR THE PERIOD 01.11.1998 TO 31.07.2001

Etat *State*	Arrêts *Judgments*	Arrêts (définitif-après renvoi devant la Grande Chambre) *Judgments (final-after referral to Grand Chamber)*	Arrêts (satisfaction équitable) *Judgments (just satisfaction)*	Arrêts (règlement amiable) *Judgments (friendly settlements)*	Arrêts (radiation) *Judgments (striking out)*	Arrêts (exceptions préliminaires) Judgments (preliminiary objections)	Arrêts (interprétation) Judgments (interpretation)	Arrêts (révision) Judgments (revision)
Macedonia/*Macedoine*	-	-	-	-	-	-	-	-
Malta/*Malte*	3	-	-	-	-	-	-	-
Moldova/*Moldovie*	-	-	-	-	-	-	-	-
Norway/*Norvège*	4	-	-	-	-	-	-	-
Poland/*Pologne*	24	-	-	2	5	-	-	-
Portugal/*Portugal*	25	-	1	21	-	-	-	-
Roumania/*Roumanie*	5	-	1	-	-	-	-	-
Russia/*Russie*	-	-	-	-	-	-	-	-
San Marino/*Saint-Marin*	3	-	-	-	-	-	-	-
Slovakia/*Slovaquie*	8	-	-	6	-	-	-	-
Slovenia/*Slovénie*	3	-	-	-	-	-	-	-
Spain/*Espagne*	5	-	1	1	-	-	-	-
Sweden/*Suède*	-	-	-	4	-	-	-	-
Switzerland/*Suisse*	12	-	-	2	-	-	-	-
The Czech Republic/*La République Tchèque*	6	-	-	-	-	-	-	-
the Netherlands/*les Pays-Bas*	7	-	-	5	1	-	-	-
the United Kingdom/le *Royaume-Uni*	53	-	2	9	2	-	-	1
Turkey/*Turquie*	65	-	-	54	4	-	-	-
Ukraine/*Ukraine*	-	-	-	1	-	-	-	-
Total	**882**	-	**8**	**368**	**19**	-	-	**2**

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

STATISTIQUES POUR LA PERIODE DU 01.11.1998 AU 31.07.2001
STATISTICS FOR THE PERIOD 01.11.1998 TO 31.07.2001

Etat *State*	Dossiers provisoires ouverts *Provisional files opened*	Requêtes enregistrées *Applications registered*	Requêtes déclarées irrecevables ou rayées du rôle *Applications declared inadmissible or struck off*	Requêtes communiquées au Gouvernement *Applications referred to Governement*	Requêtes déclarées recevables *Applications declared admissible*
Albania/*Albanie*	30	6	3	-	-
Andorra/*Andorre*	5	7	3	-	1
Austria/*Autriche*	974	622	502	77	46
Belgium/*Belgique*	717	280	105	36	36
Bulgaria/*Bulgarie*	1299	758	231	29	6
Croatia/*Croatie*	412	269	163	34	6
Cyprus/*Chypre*	74	41	27	15	8
Denmark/*Danemark*	341	156	128	23	7
Estonia/*Estonie*	214	127	50	4	4
Finland/*Finlande*	487	336	259	41	15
France/*France*	7575	2703	1423	295	165
Georgia/*Georgie*	49	20	3	1	-
Germany/*Allemagne*	4415	1580	1212	54	19
Greece/*Grèce*	609	389	244	91	55
Hungary/*Hongrie*	829	368	162	17	4
Iceland/*Islande*	16	9	10	4	3
Ireland/*Irlande*	138	52	42	7	5
Italy/*Italie*	15902	2473	696	1387	1197
Latvia/*Lettonie*	285	195	76	15	3
Liechtenstein/*Liechtenstein*	2	4	4	-	-
Lithuania/*Lituanie*	631	361	249	20	13
Luxembourg/*Luxembourg*	95	35	41	10	4

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

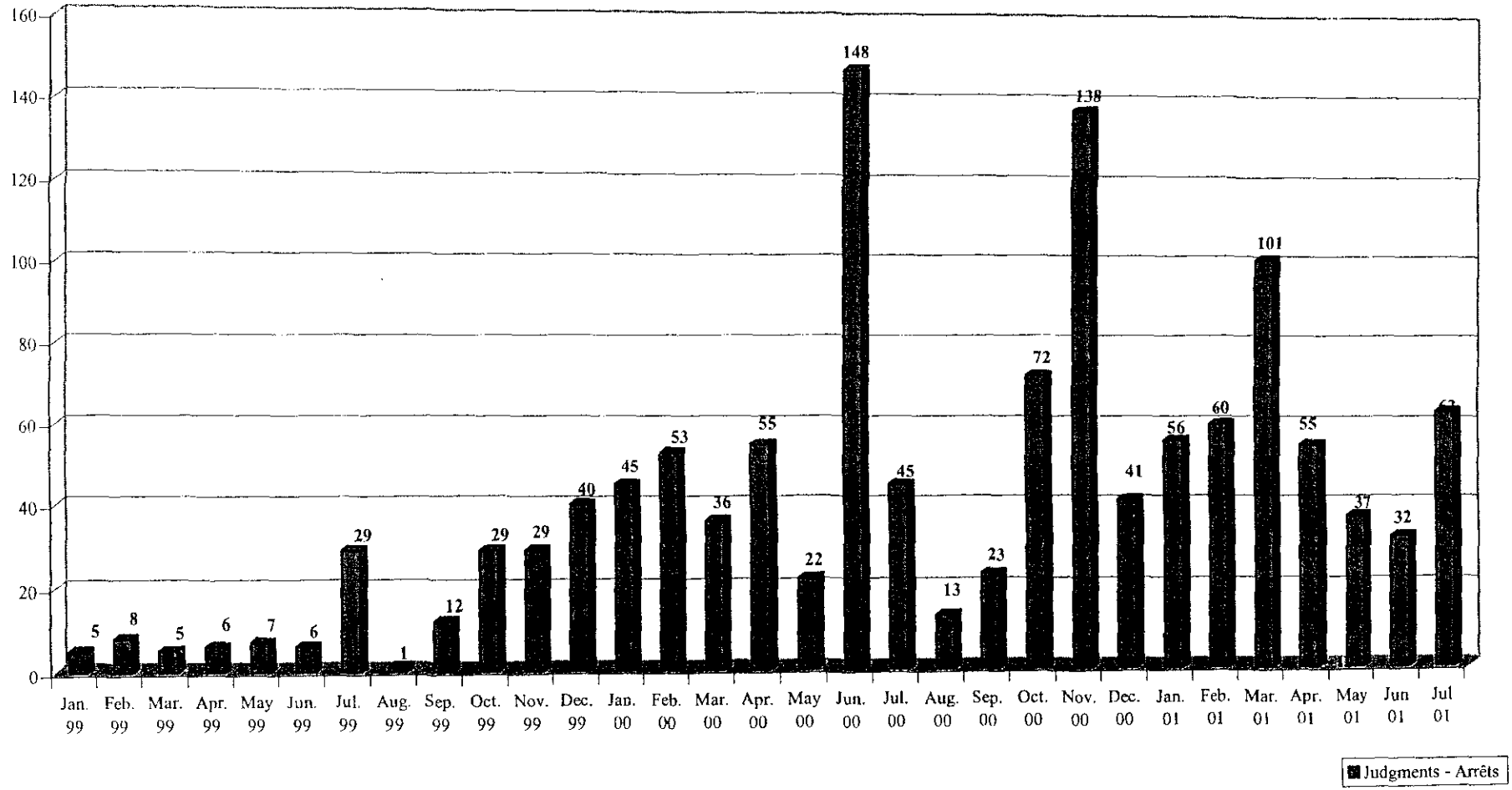
STATISTIQUES POUR LA PERIODE DU 01.11.1998 AU 31.07.2001
STATISTICS FOR THE PERIOD 01.11.1998 TO 31.07.2001

Etat *State*	Dossiers provisoires ouverts *Provisional files opened*	Requêtes enregistrées *Applications registered*	Requêtes déclarées irrecevables ou rayées du rôle *Applications declared inadmissible or struck off*	Requêtes communiquées au Gouvernement *Applications referred to Governement*	Requêtes déclarées recevables *Applications declared admissible*
Macedonia/*Macedoine*	107	58	27	9	1
Malta/*Malte*	19	9	10	3	1
Moldova/*Moldovie*	301	115	73	8	3
Norway/*Norvège*	156	73	84	4	3
Poland/*Pologne*	8274	2334	1687	141	32
Portugal/*Portugal*	491	314	140	107	77
Roumania/*Roumanie*	3882	1278	582	71	34
Russia/*Russie*	6473	3485	1929	49	1
San Marino/*Saint-Marin*	7	3	6	4	1
Slovakia/*Slovaquie*	936	667	232	60	14
Slovenia/*Slovénie*	465	207	98	12	1
Spain/*Espagne*	1002	1217	484	56	17
Sweden/*Suède*	965	619	327	25	13
Switzerland/*Suisse*	801	460	368	16	13
The Czech Republic/*La République Tchèque*	1046	564	262	17	8
the Netherlands/*les Pays-Bas*	810	506	423	39	16
the United Kingdom/le *Royaume-Uni*	3361	1431	912	245	83
Turkey/*Turquie*	2110	1898	878	766	452
Ukraine/*Ukraine*	3456	1736	1064	40	5
Other or not stated/*Autre ou non déterminé*	477	-	-	-	-
Total	**70238**	**27765**	**15219**	**3832**	**2372**

European Court of Human Rights
Judgments

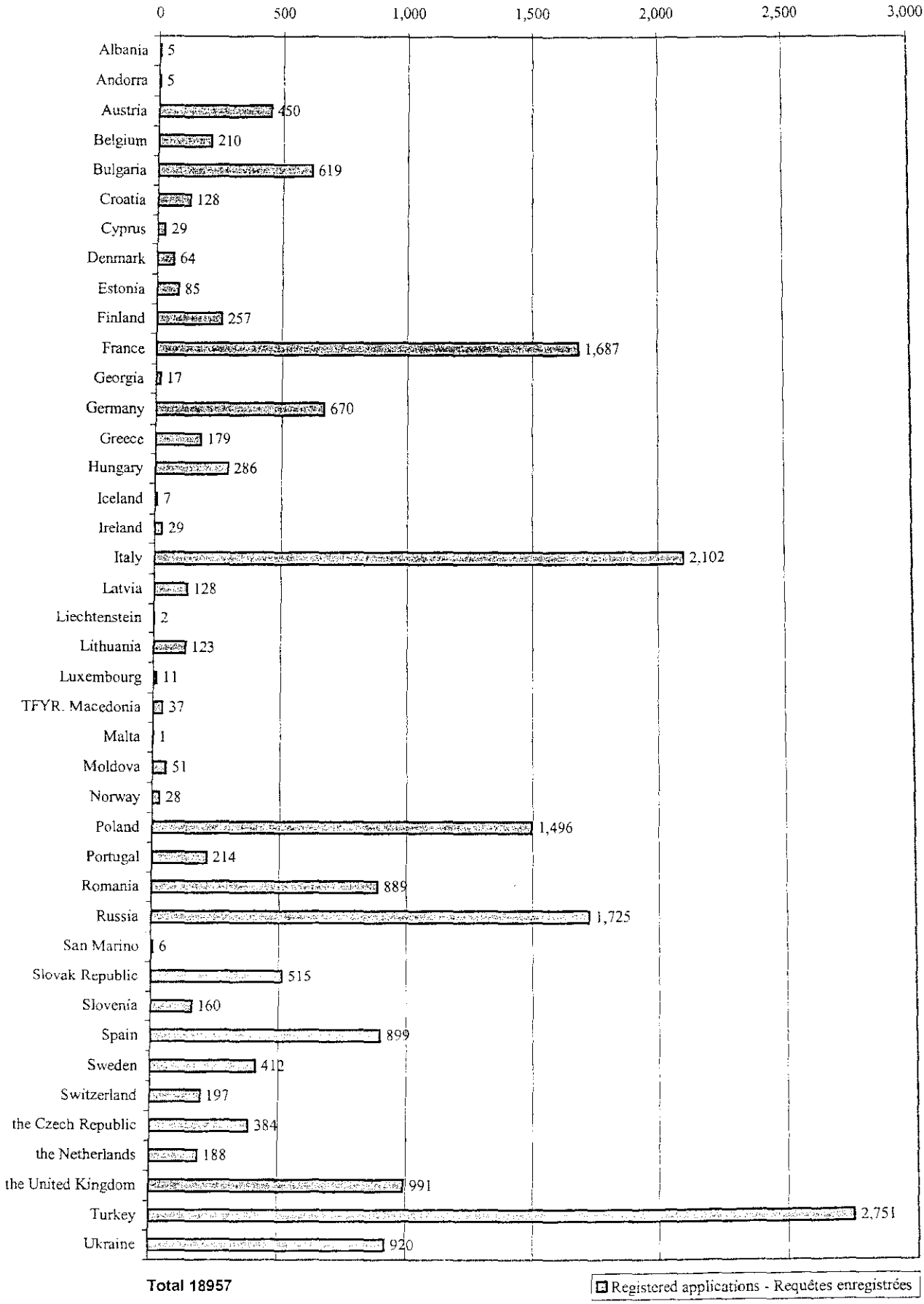
Cour Européenne des Droits de l'Homme
Arrêts

01/08/2001



European Court of Human Rights
Pending application

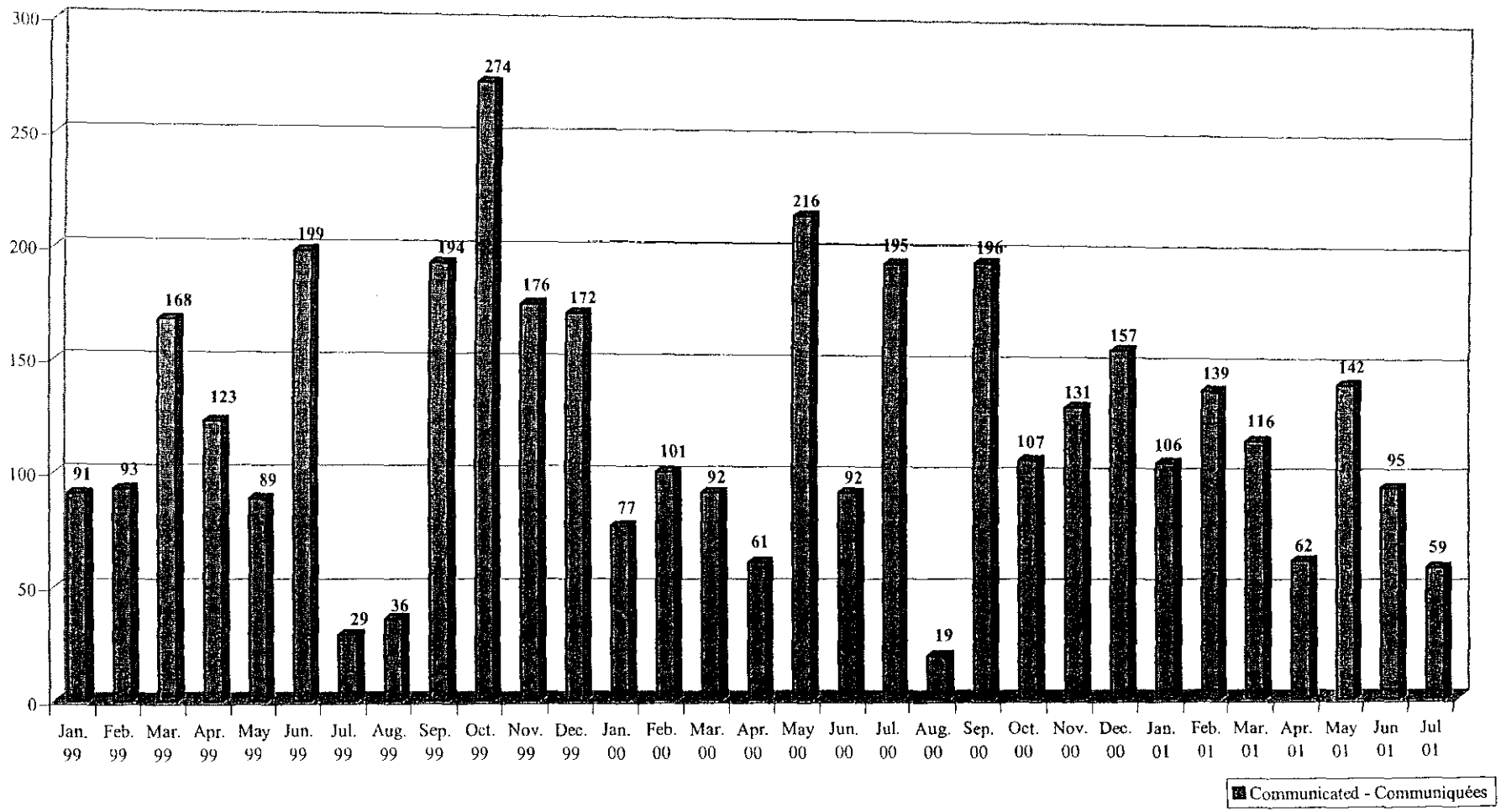
Cour Européenne des Droits de l'Homme
Requêtes pendantes



01/08/2001

European Court of Human Rights
Number of communicated applications

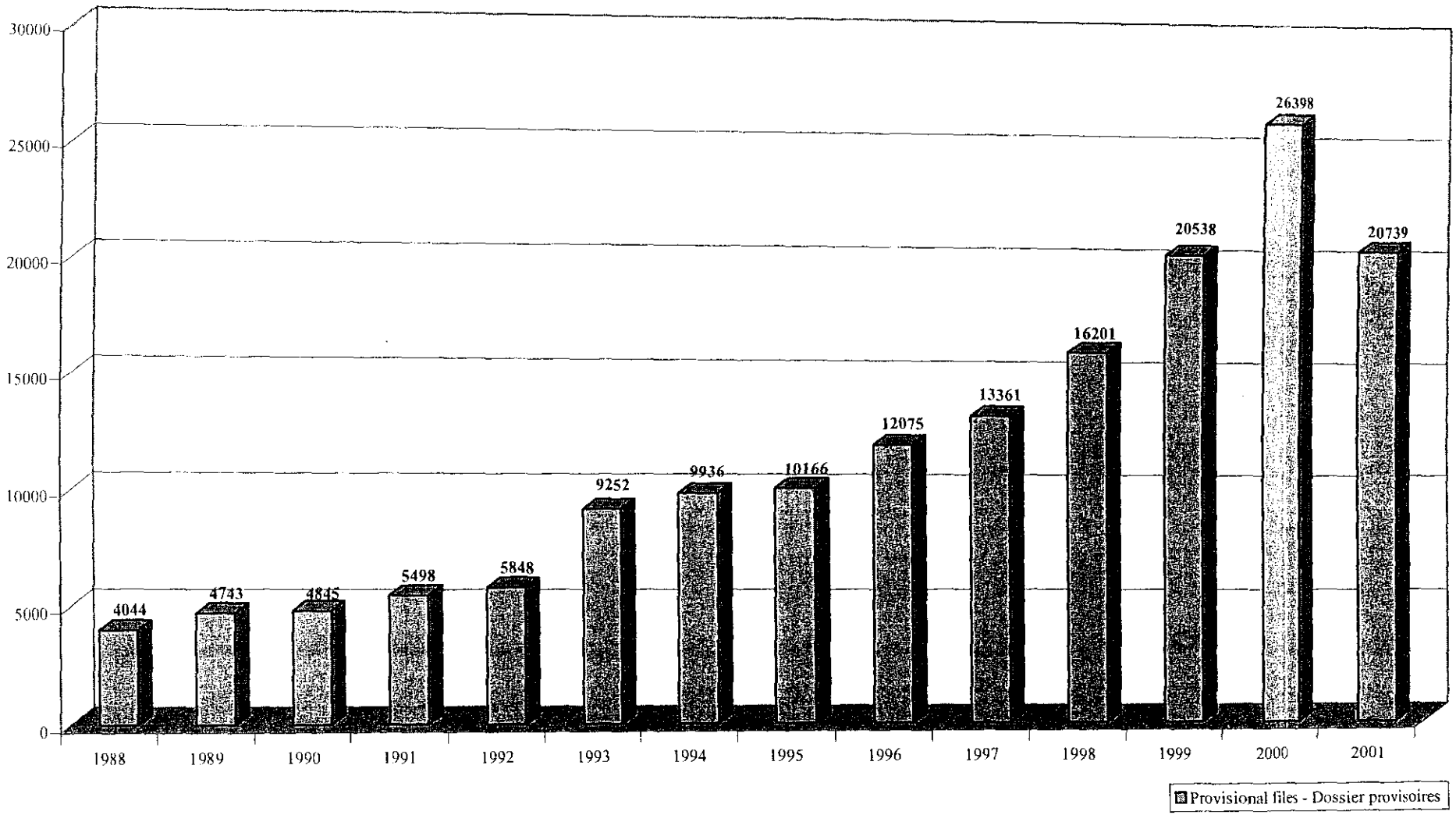
Cour Européenne des Droits de l'Homme
Nombre de requêtes communiquées



European Court of Human Rights
Number of provisional applications

Cour Européenne des Droits de l'Homme
Nombre de dossiers provisoires

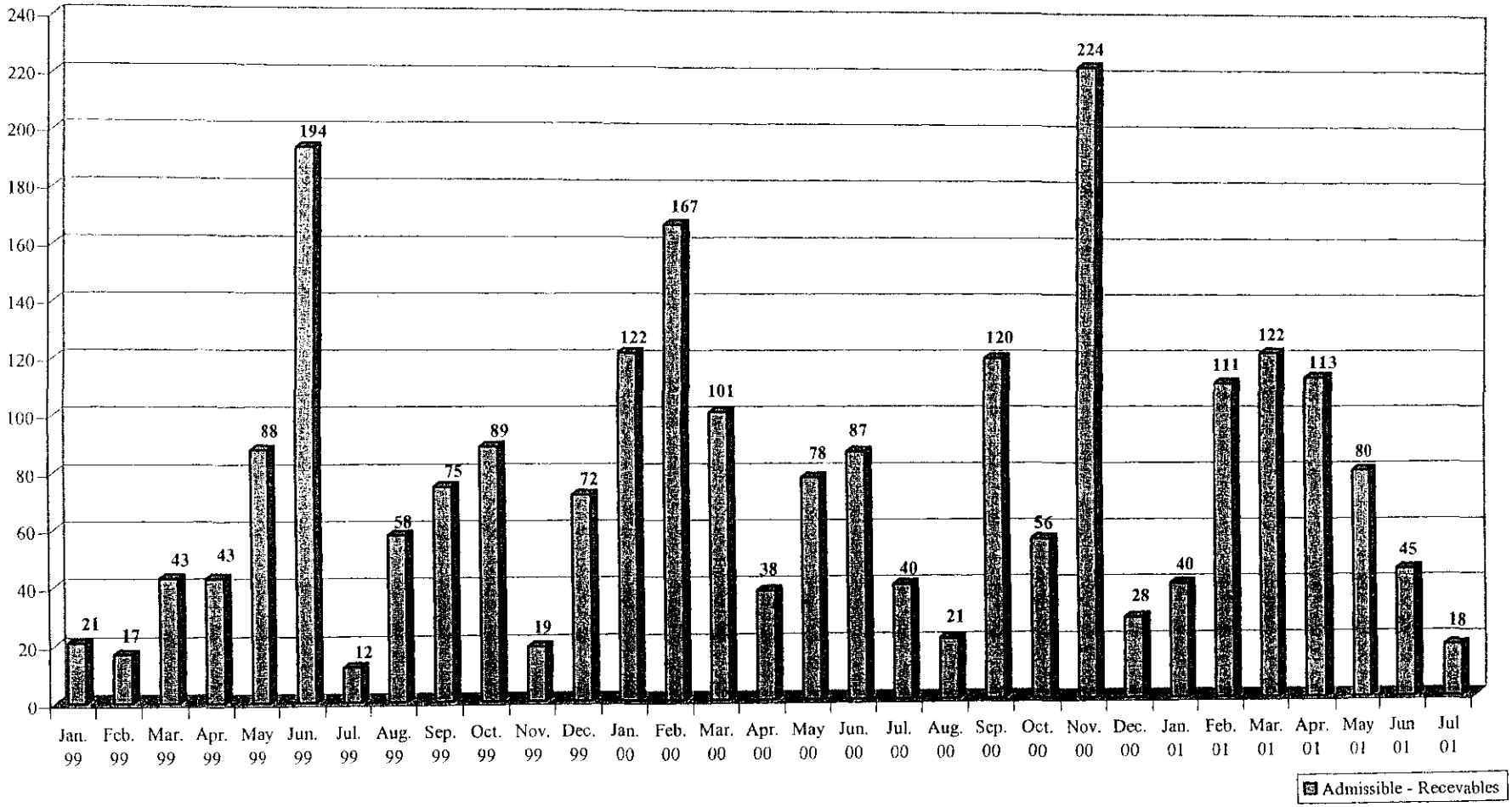
01/08/2001



01/08/2001

European Court of Human Rights
Applications declared admissible

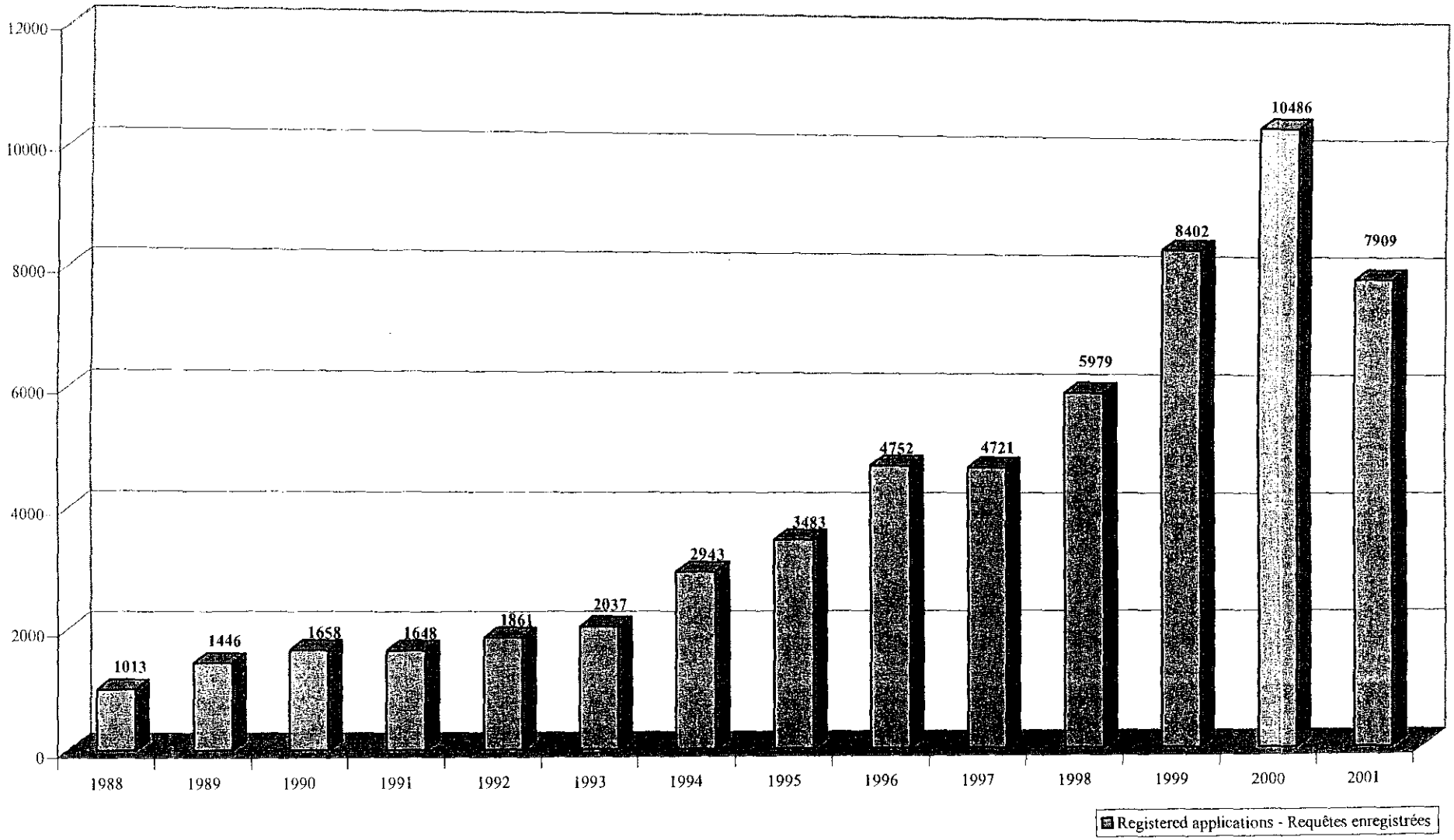
Cour Européenne des Droits de l'Homme
Requêtes déclarées recevables



European Court of Human Rights
Number of registered applications

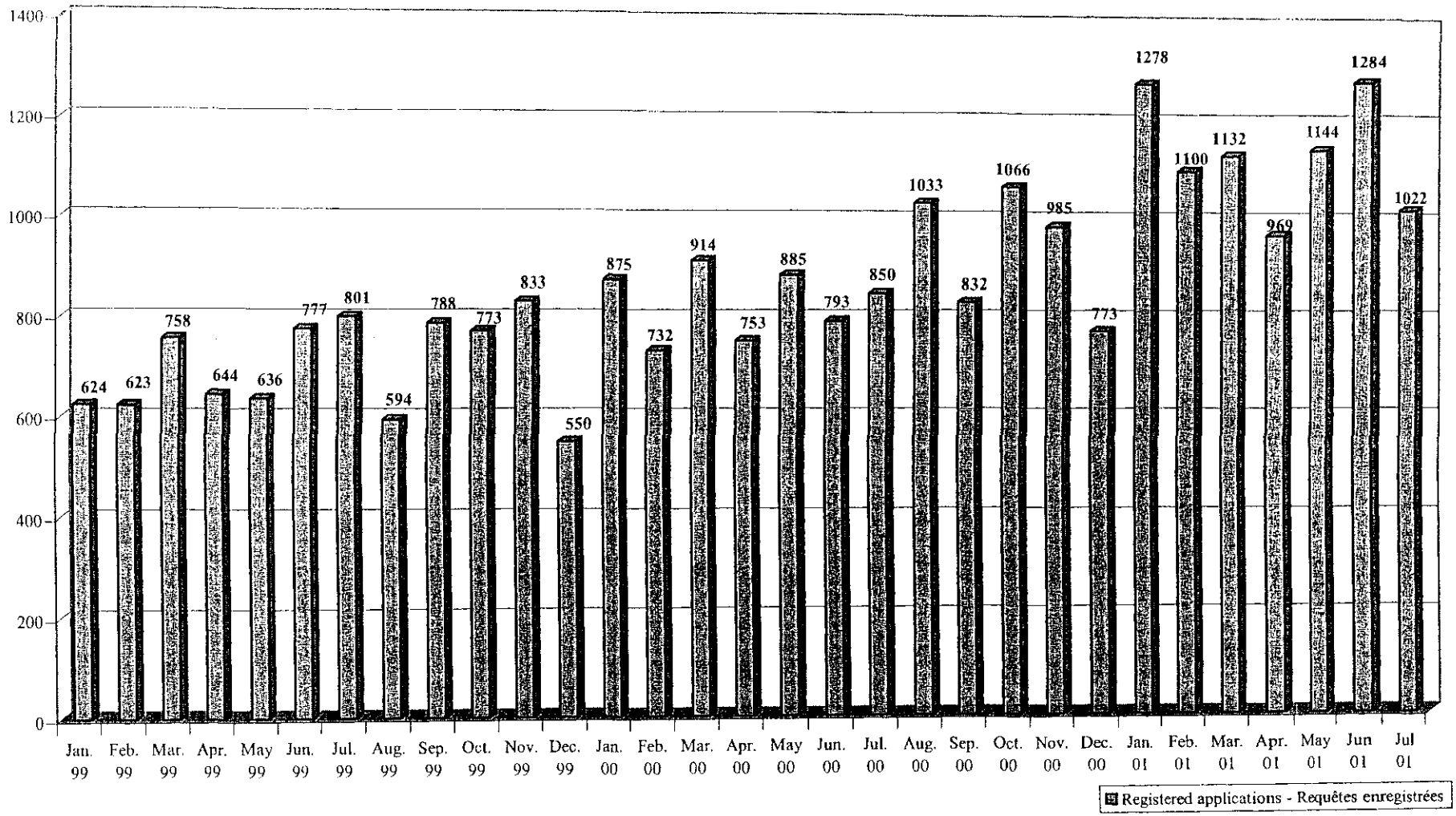
Cour Européenne des Droits de l'Homme
Nombre de requêtes enregistrées

01/08/2001



European Court of Human Rights
Number of registered applications

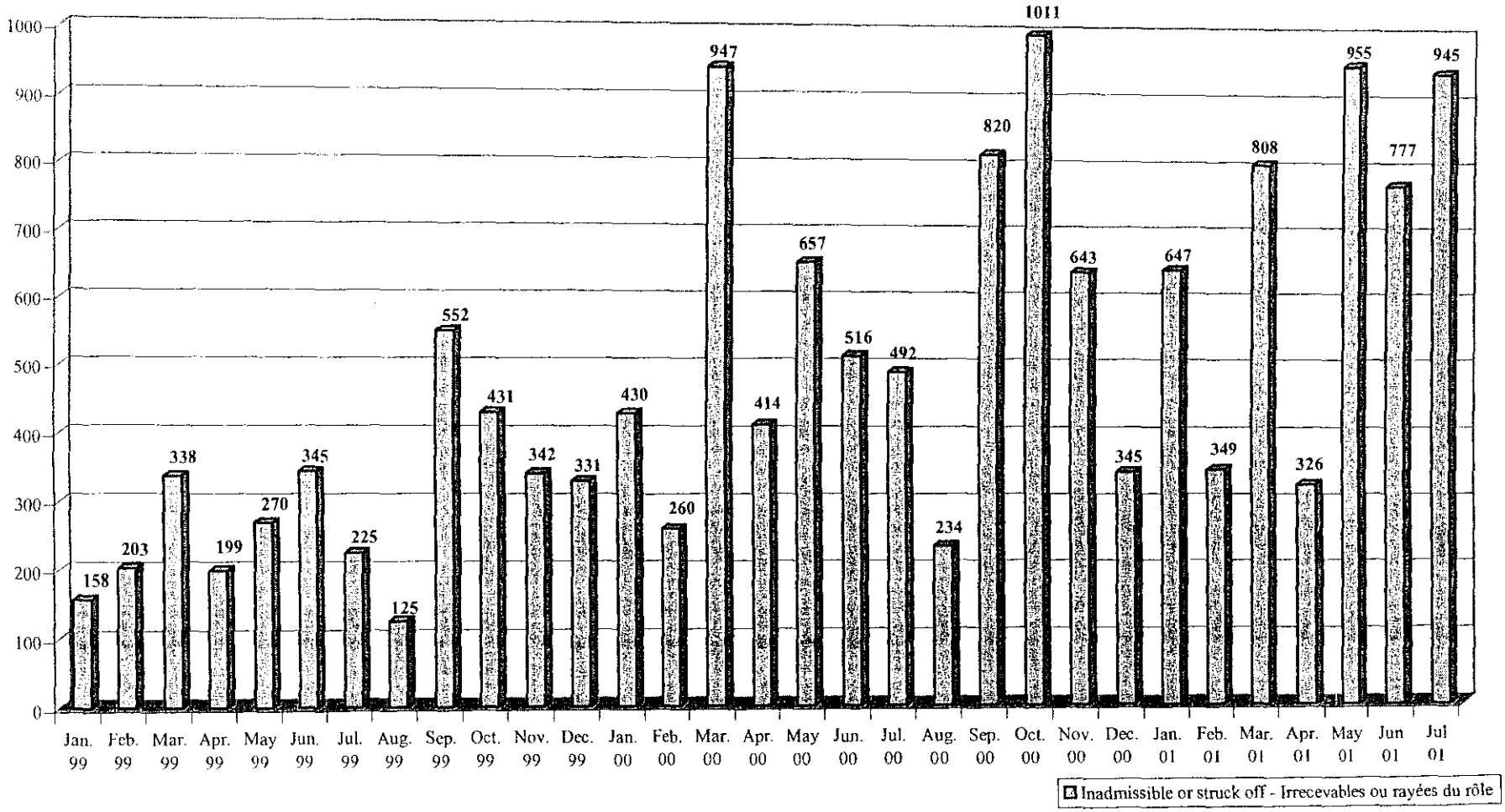
Cour Européenne des Droits de l'Homme
Nombre de requêtes enregistrées



European Court of Human Rights
Applications declared inadmissible or struck off

Cour Européenne des Droits de l'Homme
Requêtes déclarées irrecevables ou rayées du rôle

01/08/2001



APPENDIX II

IT Strategy from 1996 to present

IT CAPACITY OF THE CONVENTION INSTITUTIONS PRIOR TO THE SINGLE COURT

In November 1996 the Registry of the former Court, like the Secretariat of the Commission, worked on old Digital computers running DOS and WordPerfect 5.1. By January 1997, these computers had been replaced and the Registry had migrated to Windows NT, using Microsoft Office (Word).

One of the main objectives during 1997 was to ensure that the former Court had an internet presence so that external users could have access to basic information and to recent judgments. Its internet site was officially launched in May 1997[1]. In order to ensure rapid publication of the judgments, in the same year the Registry introduced style sheets automatically ensuring the use of standard fonts and layout by the Registry members while creating documents. As a result, the format styles of the html, Word and published (printed) versions of the judgments became uniform.

The Secretariat of the Commission for its part had established a tailor-made computerised information system (SISC), facilitating the registration of cases with detailed information about each of them, which could also be exploited for statistical and research purposes. It was originally intended to link SISC to a fast, automated, document-creation system, but lack of time and funds prevented this. As user-demand increased, SISC proved to be somewhat slow and cumbersome, with the added problem of the maximum number of possible users being limited. The fees proposed by the external consultant to effect changes being unacceptable, and in view of the foreseeable need for more powerful, faster and more autonomous tools when the Commission and the former Court merged, no further development of SISC was undertaken by the Commission.

In November 1998 the Commission merged with the former Court to form a 280 user decentralised network (this number has since risen to 350 users) managed by an IT team of 8 staff members. The first task of this team was to migrate the (more numerous) users from the Commission's Secretariat to Windows NT.

HUDOC

The HUDOC project, developed (as a joint project between the Commission, the former Court and DGII) during 1998, was launched in November 1998 to create an internet-accessible database of the Human Rights Convention case-law. This project took 6 months to develop and cost a total of 1.6 million FF. In November 1999 HUDOC won an international Microsoft Industry Solutions award for the "Best Search and Publish Solution". One effect of HUDOC has been to significantly reduce the amount of money previously spent mailing the judgments to interested parties.

CMIS

The new Court took over the management of SISC and became responsible for its future development and deployment. It was decided that SISC, which was slow to use, ran on VMS, DOS and WordPerfect and could not accommodate more than 200 users, should be replaced by CMIS (Court Management Information System). This project commenced development on April 1999, with a budgeted cost of FF2.6 million.

CMIS, implemented in September 2000, is now being used by the Registry to run the Court's case-processing activity. CMIS provides a case-file management database coupled with a

[1] Last year the new Court's site (http://www.echr.coe.int) had 15.5 million hits.

document-management module[2]. The system enables users to produce management reports and statistics, and stocks all the metadata and documents pertaining to a case. CMIS is also linked to over 2000 model letters to produce standard forms of correspondence to applicants, legal representatives and governments. The introduction of this system has resulted in the following gains of productivity:

- The process of entering data into the system has been made much easier and faster (as compared with its predecessor SISC). For example, entering new cases into CMIS is 60% faster than previously; and allocating one event to a multitude of cases is possible with CMIS, whereas with SISC the events had to be added to each case one after another.
- Users are given easy and rapid access to all details pertaining to a case, including all documents related to the case-file.
- The CMIS generic search screen gives multiple possibilities for finding cases relating to set criteria - for example, all cases being dealt with Unit 3 where Judge X is rapporteur which were communicated between certain dates.
- The CMIS system is linked to thousands of model letters into which are automatically inserted details such as the applicant's address, details of the parties' representatives, registration number, etc, thus improving the speed with which correspondence is processed.
- Reporting facilities are extremely powerful and provide the Court with a tool to produce statistical analyses and lists relating to its workload.
- The Court's timetables are managed by the system.
- The document-management system enables users to find documents easily and allows them to link documents to case-files. For example, users can search for all documents - in general or of a specified category - related to a case. The system also automatically indexes all documents, enabling users to perform full text searches and thereby reducing the time previously spent looking for documents in a conventional filing structure.
- CMIS incorporates a computerised fax solution (RightFax 6.0) centralising all faxes that arrive at the Registry. These faxes can then be sent electronically to the units concerned and registered into the document-management system.

FUTURE DEVELOPMENTS - 2001

During 2001 the Court intends to integrate HUDOC into CMIS to create a single system managing the internal and external access to judgments and case-files. Phase II of CMIS will also see a development (CyberDocs) allowing external users to access the public documents in the case-files (to ensure compliance with Article 40 § 2 of the Convention). Scanning technology will be used to transform hard-copy files into electronic versions that can be entered into the CMIS system. CyberDocs will also allow Judges and Registry members to work at home by having access to the document management system.

Other possible HUDOC developments include extending the linguistic capabilities of HUDOC. Users will be able to search for a keyword in French and the system will automatically look for the English equivalent, so that if the keyword also relates to English judgments that have not been translated into French the user will find them.

The Court wishes to introduce "agent technology" in the HUDOC system whereby new judgments or decisions can be automatically e-mailed to interested parties. This service would be billable; and the Registry is seeking the advice of the Council of Europe's Finance Department on the best way to manage it financially.

[2] The module includes archive capabilities.

The feasibility of making the application form available in editable electronic format is being investigated. Applicants would be enabled to open the form, fill it out and then e-mail it to the Registry. The electronic form could be subsequently used to populate the CMIS database with the relevant data. As an interim measure, a PDF[3] version of the application form is available to potential applicants via the internet site. The PDF version can be printed out, and then filled in by hand by the interested party and posted to the Registry.

Following discussions with the DG II, the Court is planning to open restricted access to the CMIS database in order to facilitate DG II's work in connection with the supervision of execution of judgments by the Committee of Ministers. At the same time Court users will be enabled to track data concerning execution of judgments.

A number of improvements will be carried out on the CMIS database such as the implementation of triggers relating to case-processing events. Each week an e-mail will be sent to the units concerned informing them of case- events that are imminent or require steps to be taken - for example, a warning informing a unit that a party has not filed its observations within the time-limit fixed.

Other developments include opening a restricted and secure form of external access to CMIS - for the public as well as applicants and Governments - so that they can obtain up-to-date information on the state of proceedings in cases. "Portal technology" will be used to make CMIS standard reports (statistics, case-lists and so on) and reports on execution of judgments available to the public via the internet.

CONCLUSION

The Court's sees IT as a key element in being able to cope with its rising case-load. The objective will continue to be to provide the Judges and Registry staff with effective computer tools that not only meet the needs of today but, more importantly, the foreseeable needs of tomorrow. With the collaboration of DIT, it intends to continue to build on the successful operation of its decentralised network and, with the continued development of CMIS and HUDOC during 2001, to provide improved access, both internal and external, to the case-files, the case-law and, generally, information on its activities.

3. Portable Document Format that can be printed easily.

	Year				
	2000	**2001**	**2002**	**2003**	**2004**
Maintenance					
C.M.I.S. maintenance	360,000	380,000	390,000	400,000	410,000
Toners / hardware upgrades	300,000	300,000	300,000	300,000	300,000
HUDOC maintenance	300,000	150,000	160,000	170,000	180,000
Days technical assistance	108,000	200,000	200,000	200,000	200,000
ASR maintenance	10,000	10,000	10,000	10,000	10,000
Training	160,000	160,000	180,000	200,000	220,000
Servers maintenance	181,200	200,000	200,000	200,000	200,000
Software upgrades	0	200,000	200,000	200,000	200,000
Maintenance sub-total	**1,419,200**	**1,600,000**	**1,640,000**	**1,680,000**	**1,720,000**
Renewal					
150 DELL 2000 x 150	1,277,350			1,350,000	
DELL97 x 149		1,341,000			1,341,000
DELL 99 x 10			90,000		
Lexmark 1999 x 43			378,000		
Compaq 1998 x 44		387,000			
Printers x 15					135,000
Servers x 2		260,000		260,000	260,000
Servers x 3			390,000		
Servers x 2					260,000
Servers x 5				650,000	
Microsoft Select -V 350-450			1,500,000		
Scanners				300,000	
Centralised backup					400,000
Renewal sub-total	**1,277,350**	**1,988,000**	**2,358,000**	**2,560,000**	**2,396,000**
Investments					
New printers x 15		135,000			
Servers x 1		120,000			
Scanners	300,000				
Servers x 2	240,000				
Centralised backup	400,000				
Miscellaneous (or extra)	150,000	100,000	100,000	100,000	100,000
CMIS Developments					
CMIS updates		200,000	200,000	1,000,000	200,000
CMIS CyberDocs Phase II	300,000				
HUDOC Developments ##					
HUDOC updates			100,000	100,000	100,000
New software products and telecoms					
New software licences & telecoms		100,000	100,000	100,000	100,000
Investments sub-total	**1,390,000**	**655,000**	**500,000**	**1,300,000**	**500,000**
TOTAL	**4,086,550**	**4,243,000**	**4,498,000**	**5,540,000**	**4,616,000**

IMPORTANT POINTS TO NOTE

1. The above table does not reflect new staff members for which 20,000 FF per new user should be budgeted.

2. All figures are estimates based on the present level of decentralisation.

3. During the five-year period work practices and technology are subject to change, such that this spreadsheet is only a projection and should not be considered as final.

4. CMIS may be further developed for other departments within the COE notably DGII to enhance collaboration within the Convention framework and for other projects such as a database providing information relevant to the case-law in different national langauages.

APPENDIX III

Summary of the report by the Council of Europe's Internal Auditor to the Secretary General

The text of the Auditor's report on the workings of the Court, a study which was commissioned by the Secretary General, has been separately distributed to all Heads of Delegations.

APPENDIX IV

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 June 2001
[acddh-gdr(2001)10 – Activity Report]

CDDH-GDR (2001) 10

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

REFLECTION GROUP ON THE REINFORCEMENT OF THE HUMAN RIGHTS PROTECTION MECHANISM

ACTIVITY REPORT

Introduction

This Activity Report was prepared by the CDDH Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) following its three meetings (1 March, 23-25 April and 5-8 June 2001) in accordance with the terms of reference entrusted to it by the Steering Committee for Human Rights (CDDH) at its 51st meeting (27 February –2 March 2001). The meetings were chaired by Mr Martin EATON (United Kingdom). This report contains the list of proposals/ideas retained by the Reflection Group as a result of its work. The Group has also mentioned in its meeting reports those proposals which were not retained and the reasons for which they were not retained. For this reason, large parts of the reports of the last two meetings of the Reflection Group are appended to the present Activity Report.

LIST OF PROPOSALS/IDEAS EXAMINED AND RETAINED BY THE REFLECTION GROUP

I. Introduction

The main threat to the effectiveness of the system is the exponential growth in the number of individual applications. This is amply illustrated by the Court's statistics (and those of the Committee of Ministers under Article 46 § 2) and now widely recognised as a major problem (cf. also Resolution No. 1 adopted at the Rome Ministerial Conference of 3-4 November 2000). Under the current system, ie: without changes in the current practice and/or system, it is impossible for the Court (and the Committee of Ministers) to deal with this problem. A key area of concern is the case-processing capacity at the pre-admissibility stage: roughly 84 % of registered cases are declared inadmissible. It is necessary to envisage measures with a view to a capacity increase, a reduction of the influx of cases, or both.

A further threat, closely linked to the first one, relates to the nature of cases that are brought before the Convention organs. On the one hand, there are very numerous cases that are rooted in one and the same structural problem existing in a State Party (eg: length of proceedings cases against Italy). These so-called "clone cases" all raise identical Convention issues and, from a certain point of view, constitute an unnecessary burden on the Court and the Committee of Ministers, at least under the current practice for processing these cases. To the extent that these cases demonstrate that earlier judgments in similar cases have not brought about a solution of the underlying structural problem, these cases also point to a lack of effectiveness of the Committee of Ministers' supervision of the execution of these judgments.[1] On the other hand, there are more and more cases in which the Court effectively operates as a court of first instance, requiring it to engage in time-consuming fact-finding, a function that should be performed by domestic courts and only exceptionally by the Court. However, an effective domestic remedy is sometimes not available.

II. Some parameters for any reform or other measures

A general point of departure should be the maintenance of the unique function of the ECHR and its control system of ensuring a common European minimum standard in the human rights field and thereby contributing to the democratic stability of our continent. In other words, any reform should respect and maintain the object and purpose of the ECHR, as expressed in its preamble: the collective enforcement of the rights and freedoms laid down in the ECHR and its protocols, based on a profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and which are best maintained on the one hand by effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.

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[1] This is, of course, not the only problem concerning execution of judgments. As the aforementioned Resolution recognises, the long-term credibility and effectiveness of the system are also at stake inasmuch as there are persistent difficulties with the execution of the Court's judgments in some cases. Such problems will, *inter alia*, examined by the CDDH (see footnote 3 below).

In this context, there are two apparently contradictory objectives – relating to the role of the Convention's control system – which must be reconciled: ie the need for the Court to concentrate primarily on cases raising new and/or serious issues while on the other maintaining the right of individuals to seek redress before the Court, the latter being the distinctive and unique achievement of the Convention system.

That being said, there are a number of other, more specific parameters which in one way or another derive from this general starting point:

1. most fundamentally: any reform or other measure should provide a solution to the problems mentioned in Section I above (or at least contribute to solving them). In other words: such measures should effectively lead to a reduction of the influx of cases (input), an increase in the Court's capacity to process cases (output), or both;

2. the principle of subsidiarity of the control system should be firmly maintained and where possible reinforced; [2]

3. any reform or other measure should maintain and wherever possible improve the effectiveness (including speed, quality and execution of decisions) of the system, but not weaken the system;

4. the control system should continue to offer to individuals within the jurisdiction of the States Parties the same protection guarantees in all States Parties, without geographical distinctions;

5. reform should not make the system too complicated.

III. List of possible measures/reforms

Measures that could be envisaged at national level (or intergovernmental and assistance activities of the Council of Europe promoting such national measures, preventative action which the Commissioner for Human Rights could take, etc) are not the primary concern of this document, since it focuses on proposals concerning the operation of the control system in Strasbourg.[3] However, the importance of better human rights protection at national level, also as a way of reducing the burden on the Strasbourg system, cannot be stressed enough. Nonetheless, it would be important to consider whether, in the context of reform, more incentives could be built into the system with a view to a better realisation of the subsidiarity

[2] It should be noted that the development of the Court's case-law, e.g. under Article 13, may also contribute to emphasising further the primary role of national authorities, in particular the courts.

[3] For this reason, no proposals are included concerning the national level that aim – more indirectly and in the longer term – to reduce the need for individuals to turn to the Strasbourg Court. See, as concerns measures at national level, inter alia Resolution I adopted by the Rome Ministerial Conference on Human Rights, paragraph 14, PACE Resolution 1226 (2000), Recommendation 1477 (2000) and doc. 8808 (Jurgens report). Recommendation 1477 (2000) has been forwarded for opinion to the CDDH and the Court. The opinion of the CDDH is now available (document CDDH (2001) 15, Appendix III to the report of the 51st meeting, held 27 February – 2 March 2001). The CDDH envisages to examine ways and means to improve the supervision of execution of judgments, and indeed the wider question of improving the domestic implementation of the Convention, in the context of the follow-up to the Rome Ministerial Conference on Human Rights.

principle. This means: incentives for national authorities, in particular the courts, to assume fully their prime responsibility to respect and protect the ECHR rights'

The different measures and reforms that could be envisaged may be subdivided into the following categories:

A. Changes not requiring amendment of the Convention:
   i. ideas concerning the Court's work;
   ii. improved execution of judgments.

B. Changes requiring amendment of the ECHR: within the existing system (ie: non-structural changes)

The various proposals and suggestions listed below are categorised accordingly. Within the limited time available to it, the Reflection Group has not been able to formulate and retain, even provisionally, suggestions for a more far-reaching reform of the Convention system (see the final comments in Section IV at the end of this document). For the same reason, the Group's examination of proposals has been limited to an initial analysis of each of them individually. In particular, it has not yet examined the feasibility or acceptability of various combinations of proposals that could be envisaged. Likewise, it is not excluded that some individual proposals might only be feasible or acceptable in combination with one or more other proposals.

A. Changes not requiring amendment of the Convention

i. Ideas concerning the Court's work

Note: Proposals 1 and 2 are included for information purposes only as they fall within the jurisdictional province of the Court:

1. Establishment of facts: to reduce the Court's work as much as possible, the Court's case-law could specify (delimit) further the Court's competence vis-à-vis facts established by the competent domestic courts; facts established at national level should not be questioned by the Court unless it took the view, in exceptional circumstances, that there are good reasons for so doing (e.g., absence of an effective domestic remedy);

2. As the President of the Court has recalled in June 2000, the Court itself can regulate its workload to some extent through the application of the admissibility criteria (eg: more precise application of exhaustion rule and of the "victim" requirement);

Initial stage of reception of complaints:

3. Better outside advice to (potential) applicants in States Parties; Registry lawyers should, in line with the Court's new policy, reduce time spent on contacts and correspondence with (potential) applicants during the pre-judicial stage and existing rules governing the manner in which complaints are to be presented should be applied more strictly; warning letters could possibly be dispensed with in "hopeless" cases; Registry lawyers should not provide legal advice; instead, information and legal advice should be provided at national

level – e.g., enhance advisory activities of Council of Europe offices and information centres, national human rights institutions, legal aid bureaux etc. (eg: designation of a Convention adviser), more training for lawyers at national level;

Subsequent stages:

4. As much as possible, decisions of inadmissibility should be taken by Committees, not by Chambers; the current trend in this direction should be pursued further;

5. Ensure that cases raising new Convention issues get a "fast track" processing by the Court (possibly through amendment of Rule 41);

6. Simpler procedures for dealing with some categories of cases: "hopeless" cases and some of the clone cases, respectively. In particular, separate/individualised decisions of inadmissibility could be dispensed with and replaced by a grouped decision containing an indication of the reason for rejection and listing the applications to which this decision applies (see also, as concerns the reasons, proposal A.i. 8 below);

7. Certain straightforward cases (namely cases that *prima facie* raise a violation exclusively on the basis of a point of law identical to one already decided by the Court) to be decided (admissibility and merits) in a summary procedure and judgment: eg: Court to communicate to government (and to the applicant for information) its intention to deal with the case under this summary procedure, asking the government whether it wishes to make friendly settlement proposals, accepts the summary procedure or objects to it; if no reasoned objections are raised,[4] or if the case is not settled, within a specified deadline, the Chamber would decide the case in a very brief judgment in which the Court would merely indicate that the facts of the case are not relevantly different from those in a specified earlier case and merely refer to its judgment in that case to support its finding of a violation.

8. Reduce to a minimum reasons given for certain inadmissibility decisions: in most or all Committee cases and some Chamber cases, the reasons given in the decision could be limited to a mere reference to the applicable ground in Article 35 of the Convention, combined, where appropriate, with a brief reference to the relevant case-law.

9. Encourage friendly settlements and make them a more attractive option for the parties (possibly through financial incentives); develop further the emerging practice of reaching friendly settlements even before any admissibility decision, above all in clone cases (see also proposal A.i.7 above); after the admissibility decision, the Court could play a more active role in promoting a friendly settlement of the case;

General:

10. Reinforcing the (human) resources of the Court, through the appointment of additional legal and administrative staff; in this context, consideration could be given to the appointment

[4] It is understood that there may be various reasons why governments might wish to object to this summary procedure: eg: it might contest the facts as presented by the applicant, there might have been a change in the Court's case-law since the date of the leading judgment, etc.

of temporary or permanent legal secretaries (cf. Article 25 of the Convention) who could, in particular, relieve the burden placed on the judges and/or the Registry;

11. The Court could publish annual information highlighting not only the most important cases it has decided, but also the main trends and problems which its case-law reveals as well as important issues concerning the functioning of the Court itself.

ii. Improved execution of judgments (primarily to process clone cases)

Measures in this area can help to alleviate the workload of the Committee of Ministers' and the Directorate General of Human Rights - DG II in processing execution cases and contribute to preventing similar cases from being brought to the Court (thus reducing the influx of cases).

1. Whilst fully respecting the distinct competences of the Court and the Committee of Ministers, inform the Court, in line with the new transparency rule in the Committee of Ministers' Rules for the supervision of execution of judgments, of particular interpretation issues arising in the course of the execution process, thus enabling it it to decide to put subsequent cases capable of clarifying the scope of earlier judgments on a "fast track";[5]

2. Strict application of the Committee of Ministers' new Rules for the supervision of execution of judgments;

3. General measures to be adopted as soon as possible by the Respondant State.

B. Changes requiring amendment of the ECHR:within the existing system (ie: non-structural changes)

These proposals mostly concern the filtering function

1. Wider possibilities/discretion for the Court to reject applications by raising the admissibility threshold through the introduction of additional or reformulated admissibility criteria (eg: "no prospects of success", "ill-founded", "raising no substantial complaint", etc.) Depending on the type/degree of discretion envisaged, certain compensatory measures might need to be considered in order to ensure a satisfactory solution, at national or European level, to (all or part of) the cases rejected under the new criterion.

2. Make it possible that committees may consist of judge a and two specially appointed lawyers ("assessors"), it being understood that the unanimity requirement would remain. NB: proposal provisionally retained, but the following key points remain to be answered: (i) method of appointment of assessors; (ii) question of whether this proposal would produce a significant productivity gain for the Registry which would go beyond the gain that could be obtained through a mere comparable reinforcement of staff; (iii) extent to which this would

[5] E.g., where the State argues, during the execution stage, that the judgment in question does not warrant general measures. Such problems of interpretation concerning the precise scope of the Court's finding of a violation could even be avoided to some extent by drafting judgments more clearly; however, this is entirely in the hands of the Court.

relieve the judges in comparison with their present Committee work (it is suggested that that would only be so if assessors would assume the role currently played by the judge-rapporteur at the committee stage); (iv) how many assessors? (v) existing Registry staff (which level?) or outside appointments? (vi) assessors to be attached to Registry or to a judge?

3. Make it possible for the Court to strike out a case following a friendly settlement by means of a decision instead of a judgment (cf. Article 39 of the Convention) which could make it more attractive for States to enter into negotiations with a view to such a settlement (this concerns post-admissibility cases). This suggestion would require amending Article 46§2 of the Convention in order to confer power on the Committee of Ministers to continue to supervise the execution of friendly settlements. By the same token, supervision by the Committee of Ministers should be introduced in respect of execution of friendly settlements reached during the pre-admissibility stage;

4. Make it possible for the Court to reduce the composition of Chambers (eg: from 7 to 5 judges);

5. Judicial co-operation between the Strasbourg Court and domestic courts: make it possible for the former to seek the assistance of the latter in the establishment of the facts.

IV. Some final comments

The Reflection Group is aware that the proposals listed above involve relatively minor changes of practice or of the Convention. At this stage of the reflection process, it is impossible for the Group to say whether the aggregate of several minor reforms will be capable of bringing about the desired result in terms of the effectiveness of the Convention system, or whether a more far-reaching reform is needed. The Reflection Group has also held initial discussions on a number of ideas and proposals which would amount to a more far-reaching, structural reform of the control system of the Convention, including certain ideas for reinforcing the interaction between the Strasbourg Court and national courts (subsidiarity principle). The Group was not able, in the context of the initial analysis it has carried out so far, to retain any of those proposals, in part because the scope of some of them was not yet sufficiently clear. It recognises that there would be merit in further reflection on these and other ideas for structural reform in the future.

The Reflection Group has not had the opportunity to discuss the methodology for reform in any depth. However, it is clear that amending the Convention is a fairly lengthy process, which could take up to several years. It is precisely for this reason that most of the proposals it has listed in Section III above concern changes not requiring amendment of the Convention (category A). The Reflection Group has held a first discussion of possible ways to increase the "adaptability" of the Convention system, in particular through the introduction of a "Statute of the European Court of Human Rights". Such an intermediate instrument, situated in between the Convention itself and the Rules of Court, could offer important advantages in that the elements of the control system regulated therein would be subject to a much lighter revision procedure than the Convention itself. The Group believes that this idea certainly merits further consideration.

Finally, the Reflection Group stresses that the process of reflection on reform is only at its early stages. It expresses its availability to contribute further to this process.

APPENDIX V

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 3 July 2001
[cdcj/doc2001/cdcj20 e 2001]

CDCJ (2001) 20

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)

75th meeting

(49th meeting as a Steering Committee)

(Strasbourg, 30 May – 1 June 2001)

SUBMISSIONS OF THE CDCJ FOR THE ATTENTION OF THE EVALUATION GROUP

1. The CDCJ met on 30 May - 1 June 2001 and considered, among other things, the request by the Chair of the Evaluation Group for comments on means of guaranteeing the continued effectiveness of the Court. The CDCJ welcomed this opportunity and was grateful for the extension of the deadline which enabled this important question to be considered at the plenary meeting.

2. Preliminary submissions were forwarded by the Bureau of the CDCJ in April 2001. The CDCJ endorsed those submissions but thought it might assist if these were elaborated somewhat. Further time for reflection has also allowed additional suggestions to be raised.

3. The CDCJ agreed fully with the premises set out in the letter from the Chair of the Evaluation Group that action to increase productivity and reduce the backlog of cases must not reduce the rights guaranteed by the Convention, must enable the Court to dispose of cases within a reasonable time, and must maintain the quality and integrity of the Court's case-law.

4. The CDCJ noted that some possible solutions would require amendment to the European Convention on Human Rights and would in all probability take some time to agree. Other procedural innovations, on the other hand, could be introduced relatively speedily. The emphasis ought, therefore, to be on those measures which could be put in place quickly, although reforms to the Convention should not be discounted.

5. Equally, as the guardian of European human rights it is essential that the Court itself is seen to respect the basic principles of the Convention and the standards adopted by the Council of Europe. Notable among these are the requirement provided for by Article 6, paragraph 1, of the ECHR, of a fair trial within a reasonable time by an independent and impartial tribunal. Also significant is Recommendation No. R (94)12 on the independence, efficiency and role of judges. As to the latter, the Evaluation Group might take the opportunity to remind Member States of the importance of their responsibilities in this respect.

6. Finally, the CDCJ recognises that, in the framework of the discussions on the future of the European Court of Human Rights, "there are apparently two contradictory objectives relating to the Convention's control system – which must be reconciled: ie the need for the Court to concentrate primarily on cases raising new and/or serious issues while on the other maintaining the right of individuals to seek redress before the Court, the latter being the distinctive and unique achievement of the Convention system" (see CDDH-GDR(2001)5). While the CDCJ is aware of these approaches, it is not in a position today to take a stand on these - eminently political - questions.

7. The CDCJ considered that there were three areas for action: reduction in the number of applications, the filter stage, and procedure before the Court.

(A) Reduction in the number of applications

8. One way of improving the efficiency of the Court is to reduce the number of cases that come before it by improving compliance by states with the European Convention on Human Rights. This is important for the respect of the principle of subsidiarity, which is at the basis of the control machinery established by the Convention. The CDCJ and other committees within the Council of Europe dealing with legal co-operation and human rights are all active in this field. Effective implementation of the judgments of the European Court of Human Rights is also essential in order to prevent repeated applications concerning the same types of problems. Improved efficiency of justice and domestic human rights protection is an aim which all Council of Europe member states share and the CDCJ underlined the value of this work.

(B) The filter stage

9. The CDCJ noted that a very high percentage of applications submitted to the Court were declared inadmissible. A very considerable amount of time is spent by Registry staff in dealing with such cases before they are submitted to a Committee of three judges which may decide to reject them unanimously.

10. The CDCJ understands that many applicants do not have the benefit of legal advice and therefore do not understand how to make their applications. The CDCJ

understands, however, that it is considered necessary to reduce to a minimum the provision of legal advice offered by the Registry to potential applicants because of the need for Registry lawyers to deal with the cases expeditiously. The CDCJ considered that an important contribution to the efficient throughput of cases could be made by helping ensure that applications are in good order, and by drawing applicants' attention to irreparable defects, such as applications being out of time or failing to raise points under the Convention. To that end applicants ought to be able to obtain basic technical information in their own language. Ideally this should be available in the applicant's own country.

11. Various other procedural or administrative innovations might assist. The CDCJ particularly noted the need for incentives to encourage the parties to reach friendly settlements in particular for "clone cases" before a decision is taken on the admissibility (for example, payments into court, refusal of which would carry the risk of losing costs incurred after that point). These could be introduced as part of the practice and procedure of the Court, without any need for amendments to the Convention.

12. The CDCJ also noted the value of effective case management. The CDCJ welcomed the Evaluation Group's intention to consult experts with experience of management of large judicial bodies.

13. In addition to identifying more quickly cases which are likely to be found inadmissible, part of the function of case management would be to identify cases which could benefit from other possible procedural innovations (see paragraph 17 below). A feature of case management, particularly in complex cases, might also be directions hearings during which the main issues in a case could be identified. Such hearings should make the best possible use of available technology including video conference facilities.

14. The CDCJ considers that adequate and up to date IT systems are an essential tool for a modern court; these can include sophisticated case tracking systems. The Evaluation Group may wish to investigate whether this aspect of the Court's present infrastructure is adequate. Electronic methods of transmitting applications, pleadings, notes and documents could be made available, and some documents might be translated electronically. However, computerised translation is still developing. Whilst it could be very useful for the purposes of understanding the "gist" of a simple document, it is not yet available for all European languages and is not yet suitable for complex documents.

15. The CDCJ is aware of the fact that the bottleneck is located in the pre-trial stage, i.e. before that cases are brought before the three judges. However, the CDCJ did not favour the introduction of a non-judicial "filter" for rejecting inadmissible cases. Access to elected judges is an essential feature of the Convention system. Moreover, the CDCJ understands that the procedure in the Committee of three judges which sits

to consider declaring cases inadmissible works efficiently, and there would appear to be little advantage in changing it by, for example, reducing the number of judges.

(C) Procedure before the Court

16. The CDCJ noted that only a small proportion of applications is declared admissible, so in numerical terms innovations to the procedure are of lesser importance than improvements at the filter stage. Nevertheless various procedural changes could deliver benefits.

17. Among those possible changes are grouping together cases which raise similar points, use of fast-track procedures in simple cases, for example length of proceedings cases, and the introduction of an expedited procedure for urgent cases.

18. It might be useful to consider the possibility of making better use of judges' time.

19. The Court could consider preparing shorter judgments in "clone cases", and using model judgments in certain types of cases. The latter might include simple cases. The Court's preparation might be assisted by requiring lawyers representing the parties to prepare short summaries of the documents ("skeleton arguments").

20. The CDCJ understands that the procedure for assessing damages can be cumbersome and slow. Although the final decision as to amount of damages must remain one for the Court, it may be possible for the assessment to be carried out by a member of the Secretariat or Registry who would advise the Court.

Final observations

21. The CDCJ stands ready to provide any further assistance if the Evaluation Group would find it useful. The CDCJ nominated Mr E. DESCH (Germany, Chair of the Committee of Experts on Efficiency of Justice) as the point of contact with, as his substitute, Mr E. KILBY (United Kingdom, Vice-Chair of the CDCJ), or alternatively Mr M. HAŤAPKA (Slovak Republic, Chair of the CDCJ).