

The “Filtering” Debate

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One option for reform is a new filtering mechanism to dispose of cases that do not require judicial consideration.

Introduction

A proposed reform of the European Court of Human Rights is a “filtering mechanism” to dispose of applications that are clearly inadmissible, eliminating them from the Court’s docket and leaving only those applications that raise substantive issues. This filtering mechanism would take such cases away from the regular judges of the Court, allowing those judges to devote their attention to admissible cases.

In early 2011, the Registry established a filtering unit for applications from Russia, Turkey, Romania, Ukraine and Poland, the states which account for over half of the cases pending before the Court. By the end of June 2011, the Registry reported that it had dealt with 42% more cases from these states in the first half of the year, compared with the same period in 2010.

Who is responsible for filtering?

States have identified three options for the filtering mechanism:

- Filtering by experienced Registry lawyers, appointed as “filtering officials”, under the authority of the President of the Court, to discharge the competence currently held by single judges.

Advantages include the impartiality, qualifications and experience of Registry lawyers; cost-effectiveness; and the ability for such a mechanism to be operational immediately. The major disadvantage is that final decisions on a case would lie with the Registry, not a judicial officer.

- Filtering by a new category of judge, possessing the qualifications required for appointment to judicial office and subject to independence and impartiality requirements.

Advantages include the ability of all applicants to receive a judicial decision and the efficiency gains from having decision-makers with judicial experience. Disadvantages include the time to make the system operational, budgetary implications, language barriers and recruitment difficulties.

- Filtering of cases inadmissible on procedural grounds by Registry lawyers and of cases inadmissible on substantive grounds by a new category of judge.

This combined option, would preserve judicial decision-making where some kind of opinion is needed on the substance of the application, but not for cases which clearly do not fulfill the basic formal requirements for admissibility. Disadvantages include concerns over splitting the bases for filtering.

Given the backlog of admissible Chamber cases, which will not be affected by the filtering mechanism, the Committee of Experts on the Reform of the Court proposed the recruitment of a pool of temporary judges who would have to satisfy the same criteria for office as the regular judges and would be competent to discharge most of the functions of regular judges (other than sitting on the Grand Chamber or Plenary Court).

Grounds for filtering

- Single Judge cases: Cases would primarily be those dealt with currently by single judges, namely those which can be struck out without further examination. There was no difference of opinion on this ground in the Committee of Experts.
- Repetitive cases: The Interlaken Declaration raised the possibility of filtering judges addressing repetitive applications. It was agreed that Registry staff should not decide repetitive cases. Most of the Committee of Experts agreed that repetitive cases should be dealt with by three judge panels. There was a concern that allowing someone other than a regular judge to decide on repetitive applications could send the wrong signal that systemic problems are low priorities for the Court.

Position of Civil Society

The NGO coalition, fronted by Amnesty International, supported a new filtering body in principle if a “thorough and transparent evaluation of the one-judge screening mechanism” reveals that further reform is necessary. However, they considered that any new filtering procedure should preserve the principle of judicial decision-making in all cases, arguing that public confidence and equality of treatment mandates this. They note that the existing Protocol 14 reforms are forecast to eliminate the backlog of manifestly inadmissible cases by 2015. Progress in addressing the backlog should be monitored before any decision is taken. The Amnesty International coalition supports using an additional group of judges to deal with manifestly inadmissible cases, and accept that such judges might be less experienced or senior provided that they still have necessary qualifications and be given a period of training in the Court. They argue that such judges should not deal with repetitive cases which are well-founded and often the product of intractable human rights problems.

The Budapest NGOs considered that no new filtering mechanism was required: the Court has already introduced a sophisticated filtering section for five countries, with appropriate judicial involvement and oversight, and this existing system should be allowed to develop further. Any filtering system must maintain the multiple checks in the Registry’s existing process. Adding further judicial positions or ad litem judges, or removing the final stage where a judge reviews the draft decision, would have limited impact.

info@justiceinitiative.org
www.justiceinitiative.org