

12/10/2015

# The Interlaken Process and the Court

(2015 Report)

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## Introduction

This is the fourth report from the Court to the Committee of Ministers regarding the measures being applied or under consideration to further improve the Court's functioning, as well as the evolving situation of its case load. It reflects the Court's continuing commitment to realising the aims of the reform process, above all to maintain a high qualitative standard in all aspects of its judicial work, and to achieve greater efficiency in dealing with the applications pending before it.

Since the previous report in January 2015, the reform process has been furthered by the Brussels conference. The Court's follow-up thus far to the Brussels Declaration is explained in this document.

The statistics and other information contained in this document are updated to 1 October 2015.

#### 1. Current Statistics

Comprehensive statistics on the Court's caseload and output are to be found in Appendix I. The key figures are:

The number of new applications received in the period 1 January to 1 October 2015 is 30,550. This represents a decrease of 35% compared to the same period in 2014, during which 47,270 applications were received. This reduction is unprecedented. It can be explained in part by the application of the revised Rule 47 of the Rules of Court, in force since 1 January 2014, which imposes stricter conditions on applicants before the Court examine an application. Beyond that, it is simply a matter of a declining number of applications so far this year.

As for cases disposed of, the overall figure during this period is 34,000. Compared to the previous year's figure of 60,000, this represents a decrease of 45%, on account of the steep drop in the number of applications decided by the Single Judge formation. This reflects the fact that for this category of applications the backlog has effectively been eliminated and the Court is now essentially dealing just with incoming cases within a relatively short timeframe.

10,600 applications were communicated to Governments (an increase of 97% compared to the same period in 2014).

The number of applications pending on 1 October 2015 was 66,150, a decrease of 5% since the beginning of the year.

Almost half of all pending applications are classified as repetitive cases - around 32,400 (49%). Cases allocated to the single-judge formation now represent 6% (4,150) of all cases pending.

Using the criteria set out in the Brighton Declaration<sup>1</sup>, there were around 34,200 applications in the Brighton backlog on 1 October 2015, a decrease of 15% compared to 1 January 2015.

## 2. The Court's judicial work

As already mentioned above, and in keeping with the prediction made in 2012, the Court has succeeded in bringing the situation under control as regards the filtering of inadmissible cases by the Single Judge. At this level of jurisdiction, applications are dealt with on a one in/one out basis, thanks to which the situation is now both steady and stable. These cases are dealt with in a matter of a few months, well within the timeframe stipulated in the Brighton Declaration.

While the cases referred to the Single Judge are those of least legal substance, the filtering stage is important to case-processing overall, since it allows the Registry to assign all new cases to the appropriate priority category at the outset. The Court's primary focus is, naturally, on the cases that come within the high priority categories, the number of which has increased steadily in 2015 to 10,000 at present. To improve its capacity to prepare these applications for judicial decision, the Registry continues to develop its working methods. For example, the number of lawyers working on Russian cases is such that it is possible to centralise certain stages of the procedure for the sake of greater efficiency, and likewise for these lawyers to specialise in certain types of case. A sizeable proportion of high-priority cases are also repetitive in nature, and so are dealt with via the lighter, faster WECL procedure. It should be possible to refer an increasing number of substantive cases to three-judge Committees in future, as the case-law develops and settles. Within the Court there is ongoing analysis of current working methods in order to identify changes that could lessen the time taken to decide cases, which, it is acknowledged, remains too long.

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<sup>&</sup>lt;sup>1</sup>See Paragraph 20(h) of the Declaration – the decision to communicate an application should be taken within a year, and for communicated cases the decision should be taken within two years of the date of communication.

The same applies concerning the next priority category, which is made up of normal Chamber cases. Here the tendency is an upward one, the number of such applications now standing at 19,400. The points made in the previous paragraphs about improving working methods apply here too.

The largest group on the Court's docket comprises repetitive cases, of which there are 32,400. For the country most concerned, Ukraine, which accounts for about one third of them, there have been few positive developments so far this year. There has however been progress regarding another major source of repetitive cases, Italy, due to the communication of cases in large groups and the automatic delivery of judgment six months later (2,000 fewer repetitive cases compared to last year). At this stage it can be said that the Court has the means and the tools, in particular the IT tools, to deal with repetitive cases. The projection given in the previous report, of bringing this part of the docket under control in the next two to three years, remains current.

# 3. Follow-up to the Brussels Conference

As with the other high-level reform conferences, the Court was associated with the preparation of the Brussels conference, putting forward a number of suggestions in a paper that it sent to Governments and made public in early 2015<sup>2</sup>. The Brussels Declaration takes a firmly supportive stance towards the Convention system in its several components. It is a timely reaffirmation of the need to safeguard the fundamental rights of all persons in Europe at a time when Europe must confront a series of crises, conflicts and challenges.

Within the Court, the follow-up to the Brussels Declaration is underway. Certain points that are within the Court's remit were already envisaged prior to the conference. The first of these is the intention to develop the current practice followed by the Single Judge so that applicants will receive an individual judicial decision containing a succinct indication of the grounds on which the case was rejected. Given the high number of applications allocated to the Single Judge formation, the practical implications of this change called for careful consideration. The necessary procedures and tools have been developed, and approved by the Plenary Court, so that this measure can be applied from early 2016.

A second point that has been put into practice since the conference is the creation of the Network of superior courts (see below).

In addition, the Court has continued to brief the Committee of Ministers regarding pending cases, and in particular repetitive cases. The Registrar recently provided information of this sort to the Chair of the Committee of Ministers<sup>3</sup>. The present report should also be seen as part of the same exercise in information and communication.

The invitation to the Court in the Brussels Declaration to consider providing brief reasons for the application of interim measures and for refusals by the Grand Chamber panel of referral requests made under Article 43 of the Convention is currently being examined by the Court's Reform Committee. The Court will give its response to these points, each of which has repercussions both legal and practical, at a later date.

Other points that appear in the Brussels Declaration (e.g. regarding the processing of repetitive cases, secondments, the special account, IT, etc.) are addressed in other parts of this document.

<sup>&</sup>lt;sup>2</sup> Contribution of the Court to the Brussels conference, available on the Court's website: http://www.echr.coe.int/Documents/2015 Brussels Conference Contribution Court ENG.pdf

<sup>&</sup>lt;sup>3</sup> See the letter of Mr Fribergh dated 10 June 2015, doc. #5061744.

# 4. The Court's budget and special account

Created in 2012, the special account for the Court has received contributions from 22 member States since then, totalling 2,806,600 euros by the end of 2015. The details of the contributions are set out in Appendix 2. By the end of this year, 2,181,600 euros (78% of the total) will have been spent. The funding has been used to hire new staff on two-year contracts, with ten lawyers having been recruited so far - three from Russia, two from Ukraine and one each from Turkey, Italy, Latvia, Romania and Hungary. Another recruit, from Georgia, will be starting in January 2016. Most of these lawyers have already worked at the Court, and so can be operational immediately. The annual cost of each of these recruitments (salary, pension, administrative costs), which are at A-grade level, is 85,000-90,000 euros. There will be further recruitment if more contributions are received.

Staff recruited on this basis will increase the Registry's capacity to deal with high-priority cases as well as well-founded cases.

### 5. Secondments

As of the end of September 2015, there were 29 second lawyers working at the Registry, coming from 16 States: 5 from Turkey, 4 from Germany, 3 from France, 2 from Italy, Moldova, Romania and Russia, and 1 from Armenia, Austria, Estonia, Finland, Lithuania, Luxembourg, Montenegro, Poland and Switzerland. The overall number is lower than in previous years, which is explained by the departure of the largest group of seconded staff, after they achieved the objective of their secondment, i.e. dealing with the backlog of Single Judge cases from the Russian Federation.

In addition to the persons listed above, another 12 legal staff are working for one year at the Registry as part of their judicial training. The Netherlands and Sweden continue with their longstanding practice of sending trainee judges each year (two and one respectively). The other 9 trainees, who are from Bulgaria, Croatia, Czech Republic, Estonia, Germany, Latvia, The Netherlands, Poland and Slovakia, have come to the Registry via the European Judicial Training Network.

## 6. E-justice policy

The Court continues to develop its IT system so as to improve efficiency in the handling of applications and to improve existing tools.

Users of the HUDOC database will have seen the improvements made in July. The search engine is now more powerful, and searching has been made more accurate with new criteria such as the Rules of Court, "applicability" and international legal materials that have been cited in the case-law. The search can now be narrowed to specific sections of a judgment (statement of facts, the reasoning, the operative provisions, separate opinions, etc.). Also, it is now easier to access the information related to a case, such as the legal summary, the press releases and, where applicable, the webcast of the hearing. The HUDOC interface has been redesigned in order to improve accessibility from tablets and smartphones. The HUDOC interface, currently available English, French, Russian and Turkish, will be made available in more languages.

To facilitate the filing of documents with the Court, new secure sites have been set up for Governments to use, which are more secure, reliable and user-friendly. By mid-2016, all Government Agents will have migrated to the new platform. The possibility for applicants to file documents electronically, after the point of communication of the application to the Government, is becoming a reality with the development of the Electronic Communications Service (eComms). eComms was launched in September on a limited test basis, and will be expanded progressively if deemed successful. It permits applicants to securely upload their documents to the Court and

download the documents addressed to them by the Registry. This technology will, in particular, simplify the processing of case documents for the Registry.

The Brussels Declaration expressed support for greater transparency as regards the state of proceedings (Point A.2.c)). A search engine has been developed by the Court's IT Department that will make it possible for the parties to a case to check on the current procedural state of the application. This will function in relation to cases that have already been allocated to the relevant judicial formation, are not anonymous, and remain pending before the Court or have been disposed of within the last two years. This technology will be operational before the end of the current year.

Internally, a new module for dealing efficiently with WECL cases has been developed, which will further accelerate the processing of these repetitive cases by the Registry for judicial decision. The Court's legal work has also been aided by the development of internal know-how sites, pooling the expertise and resources available within the Court regarding certain areas of law.

Looking to the future, the Court has drawn up an IT strategy document identifying priorities and expected in the period 2016-2020.

#### 7. Translations of Case-Law

The Court's translation programme has been in operation for over three years and has seen the amount of material available in non-official languages expand greatly over that time. The support of the Human Rights Trust Fund during that period has been particularly significant, allowing the Court to engage as many as 70 freelance translators at a time to translate Convention case-law into the twelve target languages (listed in the previous report). The funding provided to date comes to 1.6 million euro, and support will extend into 2016. More than 3,000 translations have been commissioned, to which another 12,000 translations must be added, which have been provided to the Court via its network of external partners (Government agents, Bar associations, judicial training centres, civil society, etc.). Currently, translations account for 13% of the contents of the HUDOC database, which can be considered a very positive result in relation to the funding invested in this initiative. Along with case-law, the number of translations of related materials (e.g. admissibility guide, case-law guides, factsheets, handbooks published with the EU Fundamental Rights Agency all available on the Court's website) is also increasing. In cooperation with HELP, the Court is also working on a pilot series of video talks (COURTalks/disCOURs) on Convention matters, starting with one on the admissibility criteria which an application has to meet in order to be examined further by the Court. These videos will be published on various Internet platforms and with subtitles in over ten languages.

Accessibility to the case-law has been further improved with the launch of Turkish and Russian interfaces for HUDOC. The possibility to allow searching using other languages is being currently explored. The Court has launched a Twitter account that focusses on translations, aiming to increase the multiplier effect of new translations, whose publication can be brought to the attention of those following the account.

While the Registry is not in a position to systematically check every translation, spot-checking is performed by Registry lawyers with the requisite language profiles. Translation quality is regarded as being high, with 90% of respondents in a stakeholder survey conducted by the Registry stating that they were satisfied in this regard.

As indicated in the previous report, in order keep this valuable endeavour going once the financing from the Human Rights Trust Fund comes to an end, the Registrar wrote to Governments requesting them to ensure the translation of selected case-law. The point will be raised again at the next meeting with Government Agents later this year. Translation of case-law and/or other publications by the Court will be part of the Council of Europe action plans for Albania, Armenia, Bosnia and

Herzegovina, and Ukraine for the years 2016-2018. To this end, the relevant calls for tender were recently published on the Court's website<sup>4</sup>.

## 8. Dialogue with States

In 2015 the Court's degree of interaction with domestic courts, an issue to which it has long attached great importance, has intensified with the creation of a new Network of superior courts. Officially launched at the Court on 5 October, the Network is now in its initial, test phase. The partners at this stage are the Conseil d'Etat and the Cour de Cassation of France. It is planned to expand the Network gradually in 2016 so that those superior courts that are willing to take part in it can do so in the near future.

The Network will facilitate the exchange of information concerning Convention case-law, and also the application of the Convention by domestic courts. The Court's contribution may include the Jurisconsult's case-law updates, which thus far have been purely internal documents. It may also make available to Network members reports on comparative and international law prepared by the Research Division. In turn, the other members of the Network will be able to contribute to comparative studies on specific legal issues under consideration by the Court, and keep the Court informed of contemporary judicial practice in the States concerned. The Network may lead to secondments from member courts to the Court's Registry. In their participation in the Network, all members will respect the principle of judicial independence and the applicable rules on confidentiality.

It is envisaged that all members of the Network will designate focal points, as will the Court. Registry lawyers from the Jurisconsult's Department will be involved, and some case-lawyers may be as well.

Overall the aim of the Network is to lead to a greater level of knowledge among its members regarding human rights law and practice at the European and domestic levels. It is intended to amplify the effects of the existing dialogue that takes place between the Court and national courts, and to contribute in a very concrete way to greater subsidiarity. In the long term, it may also facilitate more systematic exchanges and contacts on a horizontal level, i.e. among superior courts directly. At a time of continual convergence of domestic legal systems, this would represent a significant added-value from the Network.

#### 9. Rules of Court

Since the previous report, the Plenary Court has adopted the amendments necessary to implement Protocol No. 15. This process included a consultation procedure involving States and a number of civil society organisations. In June, the Registrar communicated the text of the amended rules to Governments. These will be published on the Court's internet site in due course.

The process of drafting rules for the implementation of Protocol No. 16 is currently in hand. The Court's Standing Committee on the Rules of Court has prepared a set of proposals that was sent out for consultation in July, with replies being requested by 30 November next. All replies received will be carefully considered by the Rules Committee as it prepares its final draft for presentation to the Plenary Court at a later date.

In addition to these two consultation exercises, the Rules Committee is presently studying the report prepared by the Steering Committee on Human Rights concerning the procedure for the

<sup>&</sup>lt;sup>4</sup> Tender Notice 2015/AO/60, issued 9 September 2015, with a deadline of 9 October 2015. Six languages are concerned.

amendment of the Rules of Court. The Committee of Ministers forwarded this report to the Court in March of this year, for information and possible comments<sup>5</sup>. The Court will give its reply in due course, but would already underline that, as shown by recent practice, it is already in the habit of gathering the views of Governments and other stakeholders regarding amendments to the Rules, unless these concern internal matters only.

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<sup>&</sup>lt;sup>5</sup> 1221<sup>st</sup> meeting of Ministers' Deputies, 4 March 2015, item 4.2

# Appendix 1

CASE MA	NAGEMENT SURVEY	- COURT		
	1/1-30/9/2015			
(coi	mpared to the same period 20	14)		
1. Allocated applications [roun	2015	2014	+/-	
Applications allocated to a judicial f	30550	47250	-35%	
- earmarked for Chamber or Gra	nd Chamber procedure	4100	3300	24%
- earmarked for Committee proc	edure	5950	6250	-5%
- earmarked for Single-Judge pro		20500	37700	-46%
Annual number of applications allo		20000		4070
(estimation for the current year)	Satoa	42000	56250	-25%
2. Processing applications		2015	2014	+/-
Total applications decided	<u>alahat Khutuhatakatakatakatakatahatahatakata</u>	34082	62092	-45%
- by judgment delivered:		1930	2022	-5%
by a Chamber or Grand Chambe	er	619	728	-15%
by a Committee	•••••	1311	1294	1%
- declared inadmissible or struck	out:	32152	60070	-46%
by a Chamber or Grand Chambe		332	683	-51%
by a Committee Case Weight 4		3751	2992	25%
by a Committee Case Weight 2	or 3	104	145	-28%
by Single Judge		27965	56250	-50%
Applications communicated	10619	5397	97%	
Interim measures (Rule 39):		1102	1588	-31%
- granted		131	143	-8%
- refused		478	655	-27%
- refused - falling outside the scope	493	790	-38%	
3. Pending applications [round	figures (50)]	30/09/2015		+/-
Applications pending before a judic		66150	69900	-5%
- Chamber or Grand Chamber		27500	29650	-7%
- Committee		34600	32050	8%
- Single-Judge formation		4050	8200	-51%
	mation)		• • • • • • • • • • • • • • • • • • • •	
- total by the end of the year (esti	·	65000	69900	-7%
Ten high case count countries	82,9%			
<ul> <li>applications pending before a jud</li> </ul>	dicial formation			
Ukraine	21,5%	14250	13650	4,4%
Russia	14,0%	9250	10000	-7,5%
Turkey Italy	13,8% 12,2%	9150 8050	9500 10100	-3,7% -20,3%
Hungary	5,4%	3550	1850	91,9%
Romania	5,1%	3400	3400	0,0%
Georgia	3,3%	2200	2300	-4,3%
Poland	2,8%	1850	1800	2,8%
Slovenia	2,5%	1650	1700	-2,9%
Azerbaijan	1500	1400	7,1%	
4. New applications [round figu	30/09/2015	1/1/2015	+/-	
Number of applications at a pre-jud	10200	19050	-46%	

Cases by Country (30.09.2015)								
State	1. Pending before a decision body	2. Apps Allocated						4. Difference with
	Total as of 01.01.2015	1.01 to 30.09.2015	Total as of 30.09.2015	Apps Cat. I, II,	Apps Cat. IV	Apps Cat. V	Apps Cat. VI, VII	01.01.2015
ALB	362	105	396	9	126	252	9	34
AND	4	5	5		4		1	1
ARM	1037	81	970	65	839	4	62	-67
AUT	127	200	136	5	56	39	36	9
AZE	1401	206	1506	231	1185	87	3	105
BEL	358	162	340	91	218	17	14	-18
BGR	964	545	753	110	515	74	54	-211
BIH	728	670	798	5	57	644	92	70
CRO	546	638	525	103	288	80	54	-21
CYP	69	22	55	15	32	1	7	-14
CZE	216	265	201	9	144	17	31	-15
DNK	26	32	33	16	12	1	4	7
ESP	206	447	99	13	46	4	36	-107
EST	67	144	71	9	35		27	4
FIN	100	141	41	3	10		28	-59
FRA	481	826	508	87	192	13	216	27
GEO	2275	58	2185	133	1985	51	16	-90
GER	332	639	268	18	107	15	128	-64
GRC	1187	384	919	195	323	388	13	-268
HUN	1823	2883	3553	2402	275	771	105	1730
IRL	3	14	5				5	2
ISL	21	8	19		16		3	-2
ITA	10079	1482	8058	97	1667	6018	276	-2021
LIE	10	12	8		3	1	4	-2
LIT	272	275	321	117	154	7	43	49
LUX	10	15	11	1	5		5	1
LVA	325	183	158	19	94	25	20	-167
MCO	2	6	2		2			0
MDA	1153	828	1372	217	791	121	243	219
MKD	237	285	278	25	193	37	23	41
MLT	63	20	60	15	37	4	4	-3
MON	499	78	151	5	50	82	14	-348
NLD	328	355	268	123	88	3	54	-60
NOR	67	48	49	8	33		8	-18
POL	1788	1695	1831	140	546	710	435	43
PRT	276	170	318	11	92	191	24	42
ROM	3337	3353	3385	1264	660	1149	312	48
RUS	9934	4633	9217	2637	3152	2612	816	-717
SER	2517	986	1434	30	157	1128	119	-1083
SMR	9	4	8	1	5		2	-1
SUI	143	258	127	31	76	2	18	-16
SVK	194	272	184	10	100	40	34	-10
SVN	1698	156	1646	14	186	1414	32	-52
SWE	42	165	36	7	16	1	12	-6
TUR	9457	1776	9127	671	2375	5582	499	-330
UK.	1233	489	320	37	82	116	85	-913
UKR	13625	4551	14238	985	2385	10741	127	613
Total	69631	30570	65993	9984	19414	32442	4153	-3638
	01/01/2		69631	7386	18536	35384	8325	
	increase/decrease -5% 35% 5% -8% -50%							

## EXPLANATORY NOTE

Applications with Case Warning cat. I, II, III are applications falling under the Court's policy of prioritisation:

Cat. I: urgent applications

Cat. II: pilot and leading applications
Cat. III: applications which raise as main complaints issues under Art. 2, 3 or 4 or Art. 5 § 1 of the Convention

Cat. IV: normal, difficult or very difficult Chamber applications

Cat. V: repetitive Committee or Chamber applications

Cat. VI and VII: Single Judge or Committee applications

This report does not account for applications awaiting referral request after a delivery of judgment

Brighton backlog by Country (30.09.2015)							
State	Total as of Total as of Apps Cat. I, Apps Cat. IV Apps Cat. V Apps Cat. VI,						3. Difference with 01.01.2015
	01.01.2015	30.09.2015	II, III			VII	
ALB	208	150		88	57	5	-58
AND	1	1		1			0
ARM	856	831	39	776	4	12	-25
AUT AZE	56	53 1177	115	23 1008	25 54	5	-3 201
BEL	976 250	240	115 43	180	15	2	-10
BGR	668	496	51	402	35	8	-172
BIH	270	64	31	21	42	1	-206
CRO	189	154	19	123	8	4	-35
CYP	53	29	4	22	1	2	-24
CZE	104	74	1	70	2	1	-30
DNK	3	19	10	8		1	16
ESP	42	24	4	17	3		-18
EST	32	19		18		1	-13
FIN	17	6		2		4	-11
FRA	170	80	18	54	2	6	-90
GEO	2196	2120	94	1975	48	3	-76
GER	136	92	2	65	8	17	-44
GRC	659	600	83	252	265		-59
HUN	981	676	59	129	475	13	-305
IRL	0	0					0
ISL	4	8		8			4
ITA	7222	5684	43	1097	4469	75	-1538
LIE	1	2		1	1		1
LIT	134	178	52	119	6	1	44
LUX	0 214	92	5	72	13	2	0 -122
MCO	0	0	5	12	13		0
MDA	705	758	130	511	104	13	53
MKD	90	110	14	96	104	10	20
MLT	24	13	3	9	1		-11
MON	448	87	3	30	49	5	-361
NLD	169	164	103	55	1	5	-5
NOR	13	21	3	17		1	8
POL	930	481	33	356	75	17	-449
PRT	82	118	3	44	70	1	36
ROM	1133	929	73	387	449	20	-204
RUS	6098	5676	1682	2481	1363	150	-422
SER	1326	348	3	116	224	5	-978
SMR	3	5		3		2	2
SUI	68	59	11	47	1		-9
SVK	91	88	1	74	11	2	-3
SVN	128	137	7	124	3	3	9
SWE	18	11	1	9	4000	1	-7
TUR	8343	7693	530	2043	4960	160	-650
UK.	57 5238	52 4602	11 457	37 1061	2	2 19	-5 636
UKR	5238	4602	457		3065	t	-636
Total	40406	34221	3710	14031	15911	569	-6185
	1/2015	40406	3539	14248	18692	3927	
increase	e/decrease	-15%	5%	-2%	-15%	-86%	

#### EXPLANATORY NOTE

Applications with Case Warning cat. I, II, III are applications falling under the Court's policy of prioritisation:

Cat. I: urgent applications

Cat. II: pilot and leading applications

Cat. III: applications which raise as main complaints issues under Art. 2, 3 or 4 or Art. 5 § 1 of the Convention Other applications:

Cat. IV: normal, difficult or very difficult Chamber applications

Cat. V: repetitive Committee or Chamber applications

Cat. VI and VII: Single Judge or Committee applications

**Appendix 2**States' contributions to the special account

Special					
account	Year				
STATES	2012	2013	2014	2015	
Norway	163 559	218 687	279 249	319 234	
Germany	30 000	411 139		100 000	
Turkey	50 000	100 000	80 434	60 000	
Sweden		234 805			
Finland	17 254	122 083	20 878		
Switzerland	30 607	40 459		41 345	
Netherlands	50 000	50 000			
Austria	26 385	24 000	24 000		
France		50 000			
Liechtenstein	24 736	20 163	1 975		
Azerbaijan	4 776	6 657	30 000		
Poland	39 671				
Monaco	1 065	14 968	15 000	2 244	
Luxembourg	3 365	4 417	15 057	2 478	
Ireland			21 947		
Slovak Republic		8 953	8 870		
Croatia		4 915	8 185		
Serbia		6 475	6 114		
Hungary		4 036			
Cyprus	3 000				
Armenia	1 836				
Andorra		1 584			
Total	446 253	1 323 339	511 710	525 301	