

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



SECOND SECTION

ANNUAL ACTIVITY REPORT 2005

January 2006

CONTENTS

	Page
I. Introduction	1
II. Compositions of the Section.....	2
III. Hearings.....	3
IV. Cases relinquished to the Grand Chamber	5
V. Other cases of interest.....	6
VI. Rule 39 (interim measures) and Rule 41 (priority) requests	11
VII. Third-party intervention (Article 36 and Rule 44)	12
VIII. Statistical information	13

I. INTRODUCTION

In 2005, the Section held 41 Chamber sessions (including one in the framework of the Section's former composition). Oral hearings were held in seven cases. The Section delivered 385 judgments (including eight in its former composition), of which 365 concerned the merits¹, 14 concerned friendly settlements, five were strike-out judgments and one dealt with just satisfaction². The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 1,047 cases and 235 judgments were delivered under this procedure.

Of the cases examined by a Chamber

- (a) 350 applications were declared admissible;
- (b) 106 applications were declared inadmissible;
- (c) 128 applications were struck out of the list; and
- (d) 1,039 applications were communicated to the State concerned for observations, of which 880 were communicated by the President.

In addition, the Section held 98 Committee sessions. 5,968 applications were declared inadmissible and 110 applications were struck out of the list. The total number of applications rejected by a Committee represented 96.3% of the inadmissibility and strike-out decisions adopted by the Section during the year.

At the end of the year, 15,050 applications were pending before the Section.

¹ In one judgment, the Government's preliminary objection was upheld.

² Two of the judgments adopted by the Section in its former composition related to the same case. One concerned a partial friendly settlement and the other concerned the merits of the complaints of the remaining applicants.

II. COMPOSITION OF THE SECTION

The Section was composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian), *Vice-President*,
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Mindia **Ugrekheldze** (Georgian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (citizen of Serbia and Montenegro)³, *Judges*,

Sally **Dollé**, *Registrar*,
Stanley **Naismith**, *Deputy Registrar*

³ Took office on 1 April 2005.

III. HEARINGS

Hearings were held in the following seven cases:

(1) Anheuser-Busch Inc. v. Portugal, no. 73049/01

The case concerns the annulment of the registration of a trade mark, “Budweiser”.

– Article 1 of Protocol No. 1

A hearing on admissibility and merits was held on 11 January 2005. The case was declared admissible after the hearing. Judgment was delivered on 11 October 2005 (no violation of Article 1 of Protocol No. 1).

(2) Siliadin v. France, no. 73316/01

The case concerned “modern-day slavery”. The applicant, a teenage girl from Togo, was taken to France by a French national for whom she was to work until she had paid for her plane ticket. However, her situation was never regularised and she was obliged to work for different families without remuneration.

– Article 4 of the Convention

The case was declared admissible on 1 February 2005. A hearing on the merits was held on 3 May 2005. Judgment was delivered on 26 July 2005 (violation of Article 4).

(3) D.H. and others v. the Czech Republic, no. 57325/00

The case concerns the applicants’ allegation that Roma children are regularly placed in special schools for children with learning difficulties.

– Articles 3 of the Convention, and Article 14 of the Convention combined with Article 2 of Protocol No. 1

A hearing on admissibility and merits was held on 1 March 2005. The case was declared admissible after the hearing. Judgment will be delivered on 31 January 2006.

(4) Salov v. Ukraine, no. 65518/01

The case concerned the applicant’s conviction for having disseminated false information about a candidate in presidential elections. The applicant complained that he had not been brought promptly before a judge following his arrest, since his detention had been ordered and confirmed by a prosecutor. He further complained about the unfairness of the criminal proceedings. In particular, he complained that, after a court decision to remit the case for further investigation had been quashed, the court had convicted him on the basis of the same evidence which it had previously found to be insufficient for a conviction, and had given insufficient reasons for the conviction. Finally, the applicant complained that there had been an unjustified interference with his right to freedom of expression.

– Articles 5 § 3, 6 § 1 and 10 of the Convention

The case was declared admissible on 27 April 2004. A hearing on the merits was held on 22 March 2005. Judgment was delivered on 6 September 2005 (violation of Articles 5 § 3, 6 § 1 and 10).

(5) Léger v. France, no. 19324/02

The applicant was serving a life sentence and had been in prison for 40 years. He submitted that his continued detention, despite several expert opinions that he was fit to be released, constituted inhuman and degrading treatment.

– Articles 3 and 5 § 1 of the Convention

The case was declared admissible on 21 September 2004. A hearing on the merits was held on 26 April 2005. Judgment will be delivered at a later date.

(6) Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi v. Turkey, nos. 50147/99 and 51207/99, and Fener Rum Erkek Lisesi Vakfi v. Turkey, no. 34478/97

The cases concern the annulment of property titles and inheritance deeds of minority religious foundations.

– Article 1 of Protocol No. 1 and Article 14 of the Convention; the first case also raises an issue under Article 6 of the Convention

The cases were declared admissible on 14 June 2005 and 8 July 2004 respectively. A hearing on the merits was held on 20 September 2005. Judgment will be delivered at a later date.

(7) Eskinazi and Chelouche v. Turkey, no. 14600/05

The first applicant is a woman of Franco-Turkish nationality, who is divorcing her husband. She complains of the decision of the Turkish authorities to send her five-year old daughter, the second applicant, who is an Israeli national, to Israel to live with her father, following the decision of an Israeli rabbinical court in his favour.

– Articles 6 and 8 of the Convention

A hearing on admissibility and merits was held on 6 December 2005. The case was declared inadmissible after the hearing.

IV. CASES RELINQUISHED TO THE GRAND CHAMBER

The Section decided to relinquish to the Grand Chamber the following cases:

(1) Martinie v. France, no. 58675/00

The case concerns the fairness of proceedings before the Audit Court. It raises issues under Article 6 § 1 of the Convention.

The case was declared admissible on 13 January 2004.

(2) Association SOS Attentats v. France, no. 76642/01

The case concerns the immunity of a foreign Head of State who the applicants allege was responsible for a terrorist attack on an aircraft, resulting in the loss of many lives. It raises issues under Articles 6 § 1, 13 and 34 of the Convention.

V. OTHER CASES OF INTEREST

Of the judgments delivered and decisions adopted by the Section in 2005, the most interesting included the following:

(1) Py v. France, no. 66289/01

The applicant was refused registration on the electoral roll for local elections in New Caledonia because he had not been resident there for at least ten years.

– Article 3 of Protocol No. 1

Judgment of 11 January 2005 (former composition) – no violation of Article 3 of Protocol No. 1.

(2) Phull v. France, no. 35753/03

The applicant, a Sikh, was obliged to remove his turban by security officers at an airport.

– Article 9 of the Convention and Article 2 of Protocol No. 4

Inadmissible (decision of 11 January 2005).

(3) Enhorn v. Sweden, no. 56529/00

The applicant's compulsory detention was ordered to prevent him from spreading AIDS.

– Article 5 § 1(e) of the Convention

Judgment of 25 January 2005 – violation of Article 5 § 1.

(4) Bône v. France, no. 69869/01

The application concerned the death of the applicants' son when he was struck by a train as he was getting off a stationary train.

– Article 2 of the Convention

Inadmissible (decision of 1 March 2005).

(5) Ukrainian Media Group v. Ukraine, no. 72713/01

The applicant published views about two politicians during the run-up to the 1999 presidential elections. The politicians sued the applicant on the ground that the information was untruthful and damaging to their reputations. The courts found for the politicians on the basis that the applicant had failed to establish the truth of the information.

– Article 10 of the Convention

Judgment of 29 March 2005 (former composition) – violation of Article 10.

(6) Da Cruz da Silva Coelho v. Portugal, no. 9388/02

The application concerned the death of the applicant's son in a drowning accident in a river where unlawful extraction of sand had taken place. The applicant maintained that the authorities should have provided a warning of the dangers and also complained that the Portuguese courts reached a different conclusion in an identical case.

– Articles 2, 6 § 1 and 14 of the Convention

The case was declared admissible on 31 March 2005. It was subsequently struck out of the list of cases, the parties having reached a friendly settlement (judgment of 13 December 2005).

(7) Nevmerzhitskiy v. Ukraine, no. 54825/00

The application concerned the conditions of the applicant's detention, his force-feeding while on hunger-strike and the adequacy of the medical treatment provided, as well as the lawfulness and length of his detention.

– Articles 3 and 5 §§ 1 and 3 of the Convention

Judgment of 5 April 2005 – violation of Articles 3 and 5 §§ 1 and 3. (The Chamber also found that the Government had failed to fulfil their obligation under Article 38 of the Convention to furnish all necessary facilities).

(8) Shamayev and others v. Georgia and Russia, no. 36378/02

Five of the applicants, of Chechen origin, were extradited from Georgia to Russia and imprisoned there on criminal charges; the remaining eight remained in detention in Georgia pending possible extradition and criminal proceedings in Georgia. Two of the latter were released but were subsequently detained by the Russian authorities.

– Articles 2, 3, 5, 13 and 34 of the Convention

Judgment of 12 April 2005 (former composition) – violation by Georgia of Articles 3, 5 §§ 2 and 4, and 13; no violation of Articles 2 and 5 § 1. (The Chamber also found that both respondent States had hindered the right of petition under Article 34 of the Convention and that the Russian Federation had failed to fulfil its obligation under Article 38 of the Convention to furnish all necessary facilities.)

(9) Chmelř v. the Czech Republic, no. 64935/01

The application concerned the impartiality of a judge against whom an accused had brought separate civil proceedings.

– Article 6 § 1 of the Convention

Judgment of 7 June 2005 – violation of Article 6 § 1.

(10) Said v. the Netherlands, no. 2345/02

The applicant, an Eritrean national, was refused asylum in the Netherlands. He claimed that he was an army deserter and that his return to Eritrea would entail a substantial risk of torture and death.

– Article 3 of the Convention

Judgment of 5 July 2005 (former composition) – (potential) violation of Article 3.

(11) Üner v. the Netherlands, no. 46410/99

Following his conviction for murder, a ten-year exclusion order was imposed on the applicant, a Turkish national who had lived in the Netherlands for sixteen years and whose partner and two children are Dutch nationals.

– Article 8 of the Convention

Judgment of 5 July 2005 (former composition) – no violation of Article 8. (The case was subsequently referred to the Grand Chamber.)

(12) Moldovan and others v. Romania, nos. 41138/98 and 64320/01

The applications concerned an attack by a mob on the Roma inhabitants of a village in 1993, resulting in several deaths and the destruction of houses and property. The applicants complained of the failure of the authorities to assist them and alleged that their claims had been dealt with in a racist and discriminatory manner. They further complained of a denial of access to court for the purposes of taking legal action against police officers.

– Articles 3, 6 § 1, 8 and 14 of the Convention

Judgments of 5 July 2005 (partial friendly settlement) and 12 July 2005 (former composition) – violation of Articles 3, 6 § 1 (length of proceedings), 8 and 14; no violation of Article 6 § 1 with regard to access to court.

(13) Melnychuk v. Ukraine, no. 28743/03

The application concerned the refusal of a newspaper to print the reply of the applicant, an author, to articles criticising his work, on the ground that the reply contained offensive language and a personal attack on the critic.

– Article 10 of the Convention

Inadmissible (decision of 5 July 2005).

(14) Ahmet Okyay and others v. Turkey, no. 36220/97

The application concerned the failure of the administrative authorities to comply with decisions of the administrative courts setting aside the refusal to halt the operation of three thermal power plants which posed serious health problems.

– Article 6 § 1 of the Convention

Judgment of 12 July 2005 – violation of Article 6 § 1.

(15) İ.A. v. Turkey, no. 42571/98

The application concerned the imposition of a fine on the owner/manager of a publishing house for blaspheming the Islamic religion in a novel.

– Article 10 of the Convention

Judgment of 13 September 2005 – no violation of Article 10.

(16) Segerstedt-Wiberg and others v. Sweden, no. 62332/00

The application concerns the retention of information about the applicants by the security police, the refusal to disclose the full extent of the information kept and the adverse effects that the use of the information allegedly had on the applicants' respective careers.

– Articles 8 and 13 of the Convention

Partly admissible (decision of 20 September 2005).

(17) Hukic v. Sweden, no. 17416/05

The application concerned the threatened expulsion of a family of four to Bosnia and Herzegovina, where they alleged that they risked persecution by criminals and also claimed that one of the applicants, a five-year old boy with severe Down's syndrome, would not receive the same standard of care as in Sweden.

– Articles 3 and 8 of the Convention

Inadmissible (decision of 27 September 2005).

(18) Papon v. France, no. 344/04

The application concerned alleged lack of access to a court to obtain a decision on a request for restoration of the applicant's parliamentary retirement pension, which had been suspended following his conviction for complicity in the commission of crimes against humanity.

– Article 6 of the Convention

Inadmissible (decision of 11 October 2005).

(19) Aden Robleh v. France, no. 50018/99

The application concerned the committal of the applicant for trial in France on charges of terrorist offences which took place in Djibouti and involved victims of French nationality, although he is serving a six-year prison sentence for those offences in Djibouti.

– Article 6 of the Convention

Inadmissible (decision of 18 October 2005).

(20) Gongadze v. Ukraine, no. 34056/02

The application concerned the disappearance and murder of the applicant's husband, a well-known political journalist, and the adequacy of the investigation.

– Articles 2, 3 and 13 of the Convention

Judgment of 8 November 2005 – violation of Articles 2, 3 and 13.

(21) Karagöz v. Turkey, no. 78027/01, and Dağ and Yaşar v. Turkey, no. 4080/02

These applications concerned the fact that the applicants, brought before a judge after four days in police custody, were then handed back to the police for further questioning.

– Articles 3 and 5 §§ 1, 3 and 4 of the Convention

Judgments of 8 November 2005 – violation of Articles 5 §§ 1 and 4, no separate issue under Article 5 § 3, and no violation of Article 3.

(22) Bader and others v. Sweden, no. 13284/04

The application concerned the expulsion of a family of four to Syria, where one of the applicants has been convicted *in absentia* for complicity in murder and has been sentenced to death.

– Articles 2 and 3 of the Convention

Judgment of 8 November 2005 – (potential) violation of Articles 2 and 3.

(23) İletmiş v. Turkey, no. 29871/96

The applicant, a Turkish citizen who was studying in Germany, was arrested on his return to Turkey on suspicion of involvement in a revolutionary organisation. Although he was released, he was prevented from leaving the country for several years, as his passport had been confiscated and was not returned to him.

– Articles 6 § 1 (length of proceedings) and 8 of the Convention

Judgment of 6 December 2005 – violation of Articles 6 and 8.

(24) Timishev v. Russia, nos. 55762/00 and 55974/00

The applicant, a Russian national of Chechen origin, left Chechnya in 1996 to settle in the Kabardino-Balkaria Republic of the Russian Federation. He complained that in June 1999 he was prevented from crossing from the Ingushetia Republic into the Kabardino-Balkaria Republic, on account of his ethnic origin. He further alleged that his children were refused schooling because he could not register his residence, as he was no longer in possession of his migrant's card.

– Article 2 of Protocol No. 4, Article 14 of the Convention and Article 2 of Protocol No. 1

Judgment of 13 December 2005 – violation of Article 2 of Protocol No. 4, Article 14 in conjunction with Article 2 of Protocol No. 4 and Article 2 of Protocol No. 1.

VI. RULE 39 (INTERIM MEASURES) AND RULE 41 (PRIORITY) REQUESTS

- (a) Requests for interim measures pursuant to Rule 39 were granted in 33 cases, the most interesting including the following:

(1) Molashvili v. Georgia, no. 39726/04

The applicant, who was a high-ranking official in the previous government of Georgia, is in pre-trial detention, charged with “malicious abuse of authority in public office and misappropriation of state funds”. He claims to be a victim of persecution on the grounds of his political beliefs. Rule 39 was applied on 26 July 2005, and prolonged on 25 August, in view of the applicant’s state of health and poor conditions of detention.

(2) Eskinazi and Chelouche v. Turkey, no. 14600/05

[See under Hearings, above. Rule 39 was applied on 12 October 2005 and discontinued when the application was declared inadmissible]

- (b) Requests for priority pursuant to Rule 41 of the Rules of Court were granted in 84 cases in 2005, including 14 of the Rule 39 cases. Most of the applications had an element of individual urgency, such as an imminent deportation, child custody litigation or access, the conditions of a prisoner’s detention or an applicant’s advanced age or critical state of health.

VII. THIRD-PARTY INTERVENTION (ARTICLE 36 AND RULE 44)

Leave to submit third-party comments was given by the President pursuant to Rule 44 § 2 of the Rules of Court in the following cases:

(1) E.B. v. France, no. 43546/02

The case concerns the refusal to approve as a prospective adoptive parent a woman living in a stable lesbian relationship. It was communicated to the respondent Government for observations in November 2004 (Article 8 of the Convention). A number of non-governmental organisations have been authorised to intervene.

(2) Eskinazi and Chelouche v. Turkey, no. 14600/05

[See under Hearings, above. The father of the second applicant was authorised to intervene.]

VIII. STATISTICAL INFORMATION

1. Results for the year
2. Results by month
3. Applications pending
4. Graphic charts
 - (a) Judgments delivered
 - (b) Inadmissibility and strike-out decisions
 - (c) Admissibility decisions
 - (d) Applications communicated
 - (e) Applications pending by year of lodging
 - (f) Applications pending by State

APPENDIX 1

Judgments delivered in 2005	
Merits	365
Striking out	5
Friendly settlement	14
Just satisfaction	1
Revision	
Total	385

Chamber decisions adopted in 2005	
Applications declared admissible	350
Applications declared inadmissible	106
Applications struck out of the list	128
Total	58

Committee decisions adopted in 2005	
Applications declared inadmissible	5968
Applications struck out of the list	110
Total	6078

Applications communicated in 2005	
Total	1039

Total cases finalised in 2005 (judgments*, inadmissibility and strike-out decisions)	6696
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*Not including judgments on just satisfaction and revision but including judgments which are not yet final. Some judgments dealt with more than one application.

APPENDIX 2

Chambers					Committees	
Judgments	Admissible	Inadmissible	Struck out	Communicated	Inadmissible	Struck out
18	14	13	6	90	473	6
18	8	2	4	21	154	3
15	38	11	6	155	523	7
26	17	5	5	58	320	5
33	29	9	6	55	505	11
23	22	8	9	108	782	11
21	8	2	10	34	161	9
3	24	3	3	64	172	1
54	46	12	13	133	858	9
52	32	14	11	110	1008	26
75	87	18	48	81	679	18
47	25	5	7	130	333	5
385	350	106	128	1039	5968	110

APPENDIX 3

Applications pending on 31 December 2005	
Total applications not yet examined	13289
Adjourned/Communicated for information	56
Communicated/Adjourned	2
Communicated for observations	1349
Admissible	120
Judgments not yet final	232
TOTAL APPLICATIONS PENDING	15 050

APPENDIX 4

Chart 1: Judgments delivered in 2005

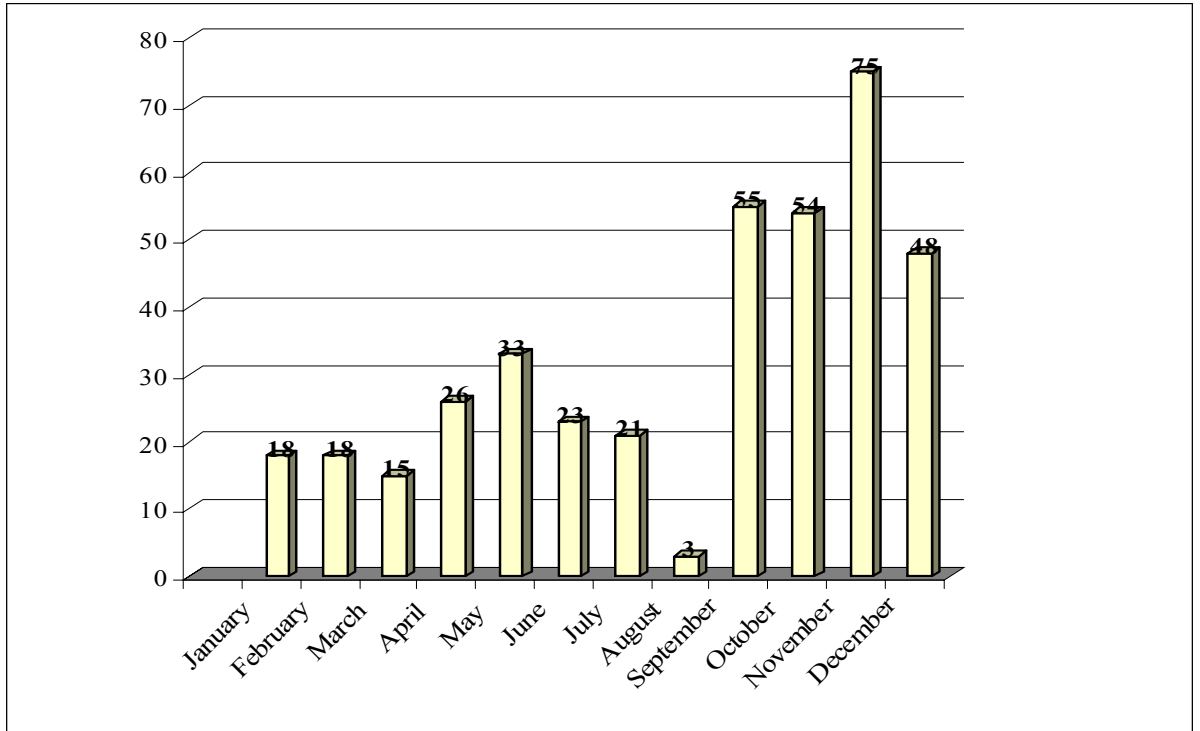


Chart 2: Strike-out and Inadmissibility decisions adopted in 2005

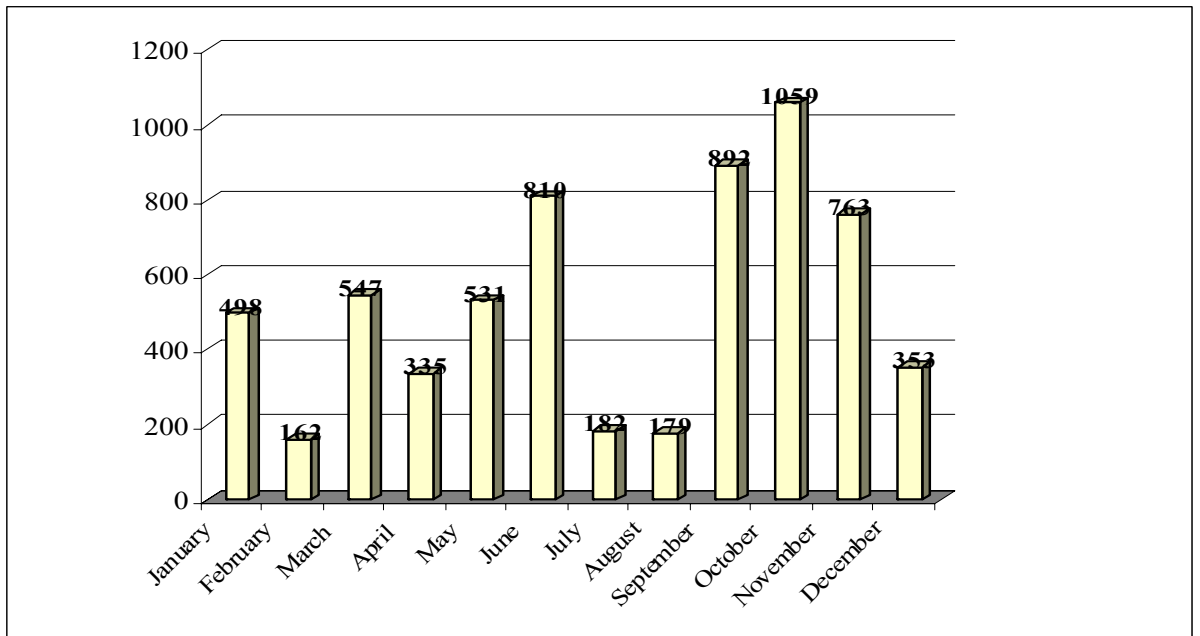


Chart 3: Cases declared admissible in 2005

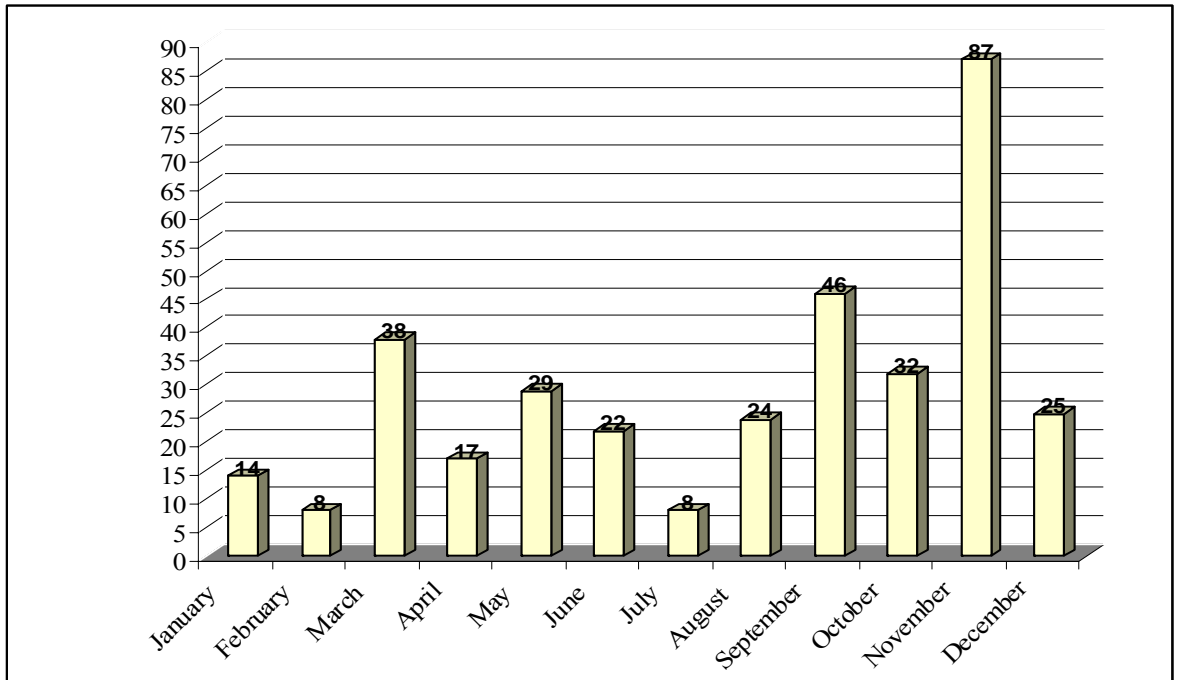


Chart 4: Applications communicated in 2005

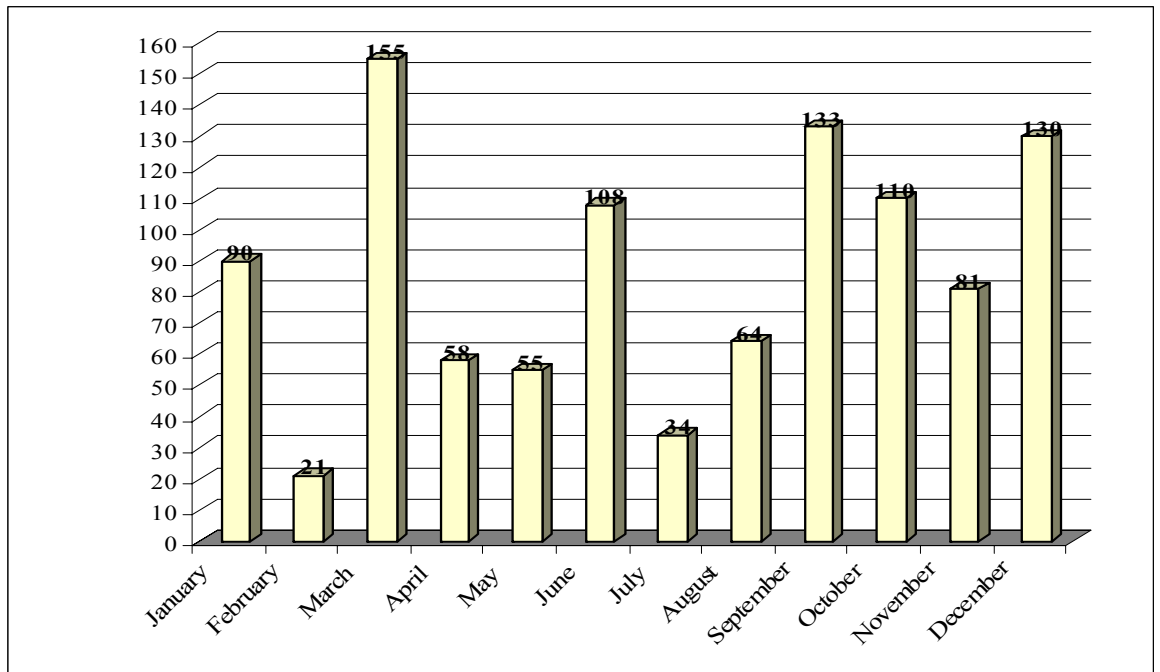


Chart 5: Applications pending on 31 December 2005 by year of lodging

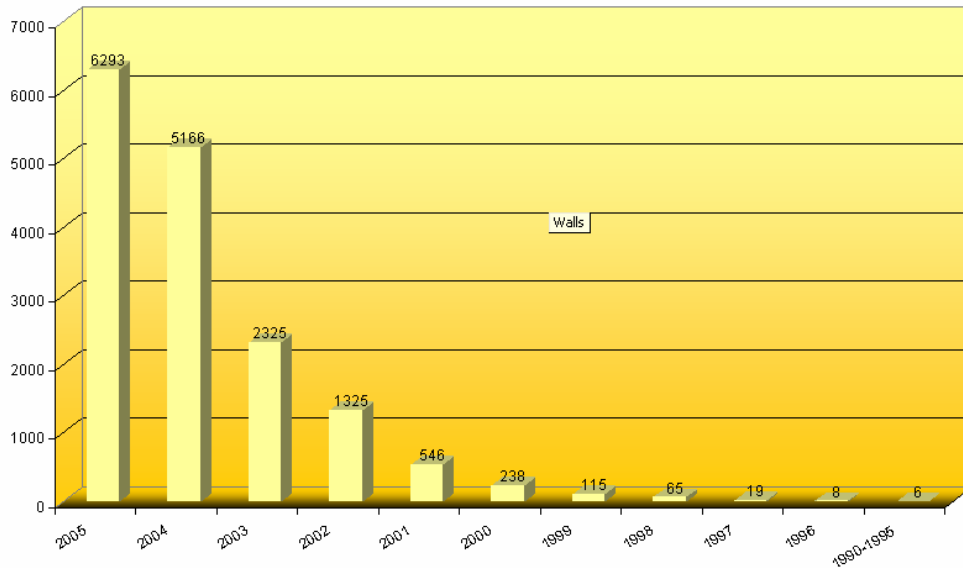


Chart 6: Applications pending on 31 December 2005 by State

