

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



FOURTH SECTION

ANNUAL ACTIVITY REPORT 2005

January 2006

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**I. INTRODUCTION**

In 2005, the Section held 40 Chamber sessions. Oral hearings were held in six cases. The Section delivered 196 judgments, of which 188 concerned the merits and five concerned friendly settlements. Three cases were struck out of the list by a judgment. Article 29 § 3 of the Convention (combined examination of admissibility and merits) was applied in 563 cases and 79 judgments were delivered under this procedure.

Of the cases examined by a Chamber

- (a) 164 applications were declared admissible;
- (b) 167 applications were declared inadmissible;
- (c) 53 applications were struck out of the list; and
- (d) 611 applications were communicated to the State concerned for observations of which 418 were communicated by the President.

In addition, the Section held 93 Committee sessions, 8296 applications were declared inadmissible and 118 applications were struck out of the list. The total number of applications rejected by a Committee represented 97.45% of the inadmissibility and strike-out decisions taken by the Section during the year.

At the end of the year, 11,157 applications were pending before the Section.

## II. COMPOSITION OF THE SECTION

Nicolas **Bratza** (British), *President*,  
Josep **Casadevall** (Andorran), *Vice-President*,  
Luzius **Wildhaber** (Swiss),  
Giovanni **Bonello** (Maltese),  
Matti **Pellonpää** (Finnish),  
Rait **Maruste** (Estonian),  
Kristaq **Traja** (Albanian),  
Stanislav **Pavlovschi**, (Moldovan),  
Lech **Garlicki**, (Polish),  
Javier **Borrego Borrego**, (Spanish),  
Ljiljana **Mijović**, (Bosnia and Herzegovina),  
Ján **Sikuta**, (Slovakian)

Michael **O'Boyle**, *Registrar*,  
Françoise **Elens-Passos**, *Deputy Registrar*.

## III. HEARINGS

Hearings were held in the following cases:

### (1) **Zarb Adami v. Malta, no. 17209/02**

The applicant was called to serve as a juror, but failed to appear. He was therefore sentenced by a court to pay a fine in respect of his non-appearance. He alleged that he had been the victim of discrimination on grounds of sex as the percentage of females requested to perform the duty of jury service was negligible. He claimed that the burden of jury service fell predominantly on males as well as on persons who had previously served as jurors.

– Article 4 § 3, 6 and 14 of the Convention

A hearing on the admissibility and merits was held on 24 May 2005. Admissible (decision of 24 May 2005). Judgment will be delivered at a later date.

### (2) **Jelicic v. Bosnia and Herzegovina, no. 41183/02**

The applicant complained of the impossibility of recovering a foreign currency bank deposit despite a domestic court judgment in her favour in 1998. She subsequently brought a complaint to the Human Rights Chamber which had also found in her favour. A preliminary admissibility question arose whether the procedure before the Human Rights Chamber – set up pursuant to the Dayton Agreement – was another “procedure of international investigation or settlement” for purposes of Article 35 § 2 (b) of the Convention.

– Articles 6, 35 § 2 (b) and Article 1 of Protocol No. 1 of the Convention

Admissible (decision of 15 November 2005). A hearing on the admissibility and merits was held on 28 June 2005. Judgment will be delivered at a later date.

**(3) D. v. Ireland, 26499/02**

The applicant, an Irish national, was expecting twins and was informed by doctors that one of the foetuses she was carrying suffered from a fatal foetal abnormality and that the other had already died. She complained that, because of the absence of abortion in Ireland for someone in her circumstances, she was obliged to travel abroad to terminate the pregnancy.

– Articles 3, 8 and 10 of the Convention

A hearing on the admissibility and merits was held on 6 September 2005. A decision on admissibility and, if appropriate, a judgment will be delivered at a later date.

**(4) Evans v. UK, no. 6339/05**

The applicant, before having an operation to have her ovaries removed to prevent the spread of cancer, had her last eggs used to create six embryos with the sperm of her partner. Both had signed consent forms which gave each other the right to withdraw their consent prior to implantation. The resulting embryos were stored by a private clinic in the UK. She subsequently sought to have the embryos implanted as this represented her only chance to bear a child to which she is genetically related. Following the breakdown of the relationship with the applicant, her partner withdrew his consent to this procedure. The Human Fertilisation and Embryology Act 1990, entitles her former partner to refuse to permit the embryos to be implanted and the clinic is required to destroy them. Rule 39 was applied requesting the Government to take measures to ensure that the embryos were preserved until the determination of the present proceedings. Priority was granted to the case pursuant to Rule 41.

– Articles 2, 8 and 14 of the Convention

A hearing on the admissibility and merits was held on 27 September 2005. A decision on admissibility and, if appropriate, a judgment will be delivered at a later date.

**(5) Murillo Saldias and others v. Spain, no. 76973/01**

Members of the applicants' families were among the victims when a campsite in Spain was flooded causing 87 deaths. The applicants, some of whom had been injured during the catastrophe, complain of gross negligence on behalf of the authorities who had been warned in an official report of the dangers of the location of the camp. A subsequent criminal investigation against local officials involved in the granting of planning permission was discontinued on the ground that there was no case to answer.

– Articles 2, 6 § 1 and 13 of the Convention

A hearing on the admissibility and merits was held on 8 November 2005. A decision on admissibility and, if appropriate, a judgment will be delivered at a later date.

**(6) Tsfayo v. the United Kingdom, no. 60860/00**

The applicant, a refugee from Ethiopia, had been refused back payments of a housing allowance. She appealed unsuccessfully to the Housing Benefit Review Board which was composed of local councillors assisted by a legal adviser. The decision of the Board was subject to judicial review before the Administrative Court. She

complained of the lack of independence and impartiality of the Housing Benefit Review Board.

– Article 6 § 1 of the Convention

Admissible (decision of 24 August 2004). A hearing on the merits was held on 22 November 2005. A judgment will be delivered at a later date.

#### **IV. CASES RELINQUISHED TO THE GRAND CHAMBER**

One case was relinquished to the Grand Chamber by the Section.

##### **Jussila v. Finland, no. 73053/01**

Lack of an oral hearing in a taxation procedure which resulted in the imposition of a surcharge. The tax surcharge in question amounted to 300 euros.

– Article 6 § 1 of the Convention

#### **V. INTERESTING JUDGMENTS AND DECISIONS/OTHER CASES OF INTEREST**

Of the judgments delivered and decisions adopted by the Section this year, cases of interest include the following:

##### **(1) Johtti Sappmelaccat Ry and others v. Finland, no. 42969/98**

The case concerns indigenous people (the Sámi) having to share previously exclusive right to fish in State-owned water-areas. The first applicant is an association promoting Sámi culture and the other applicants are Finnish nationals of Sámi origin. Following the Fishing Act as amended in 1997, which entered into force in 1998, the public right to fish, as it existed in the rest of Finland, was extended to the municipalities of the district where the Sámi live.

– Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention

Inadmissible (decision of 18 January 2005).

##### **(2) Tanis and others v. Turkey, no. 65899/01**

The applicants are relatives of the President and the Secretary of the People's Democracy Party (HADEP) of Silopi who have been missing since their attendance at the local gendarmerie in January 2001.

A fact-finding mission took place between 28 and 30 April 2003

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

Admissible (decision of 11 September 2001).

Judgment of 2 August 2005 – violation of Articles 2, 3, 5, 13 and 38 of the Convention.

**(3) J.A. Pye v. the United Kingdom , no. 44302/02**

Registered land belonging to the applicants, worth over £10 million on the applicants' valuation, was occupied by farmers for more than twelve years without paying rent following the expiry of a grazing agreement. Due to the application of the law of adverse possession the applicant companies lost title to the property.

– Article 1 of Protocol No 1 of the Convention

A hearing on the admissibility and merits was held on 8 June 2004.

Admissible (decision of 8 June 2004).

Judgment of 15 November 2005 – violation of Article 1 of Protocol No. 1 to the Convention (and adjourned the issues arising under Article 41 of the Convention)

**(4) Kakoulli v. Turkey, no. 38595/97**

The case concerns the killing of a Greek Cypriot by Turkish Cypriot soldiers in Cyprus. The applicants are members of the deceased's family. The deceased had allegedly gone collecting snails and had wandered into the territory of the TRNC ("Turkish Republic of northern Cyprus").

– Articles 2 and 8, both in conjunction with Article 14 of the Convention

Admissible (decision of 4 September 2001).

Judgment (22 November 2005) – violation of Article 2 of the Convention.

**(5) Tysiac v. Poland, no. 5410/03**

The applicant, who was suffering from severe myopia, was refused a therapeutic abortion and obliged to carry her third child to term. She had been advised by her doctors that she risked becoming blind if she continued with her pregnancy. She complained that no procedure was available to her under domestic law to challenge the refusal to have a therapeutic abortion.

– Articles 3, 8, 13 and 14 of the Convention

Hearing on admissibility and merits scheduled for 7 February 2006

**(6) Klein v. Slovakia, no. 72208/01**

The applicant published an article in which he had strongly criticised a Slovakian archbishop for his public proposal to withdraw from distribution the film by M. Forman "The People v. Larry Flynt" as well as the poster accompanying the distribution of that film. The applicant had used slang terms with an offensive connotation and the appellate court had found that the article had exceeded the limits of journalistic ethics. The applicant had been convicted of "defamation of a group of persons on the ground of their religious belief" and sentenced to pay a fine amounting to approximately EUR 375.

– Article 10 of the Convention

Admissible (decision of 8 November 2005).

**(7) Arrigo and Vella v. Malta, no. 6569/04**

Charges of corruption had been brought against the applicants, two high-ranking judges. The Prime Minister had made a statement to the media regarding investigation

into the offences which was later considered by the Constitutional Court to have constituted a breach of the presumption of innocence. The applicants complained of lack of impartiality and independence of the trial court and that they were not provided with an effective domestic remedy for the violations of their rights to a fair trial and to be presumed innocent.

– Articles 6 and 13 of the Convention  
Inadmissible (decision of 10 May 2005).

**(8) S. v. The United Kingdom , no. 30562/04**  
***Marper v. the United Kingdom, no 30566/04***

Retention of fingerprints and DNA samples of suspects even in circumstances where no guilt has been established or when the investigation has been discontinued: communicated.

– Articles 8 and 14 of the Convention.  
The case is pending.

**(9) Koons v. Italy, no. 68183/01**

Decision by the courts of the USA ordering the return of the applicant's son by her mother who had taken the child to Italy before the legal proceedings were finalised. The father, the applicant, claimed that it was in the child's interest to be reunited with him within the shortest possible delay in view of the nature of the mother's work.

– Article 8 of the Convention  
Admissible (decision of 7 June 2005).

**(10) TWGS v. the United Kingdom, no. 5385/02**

The applicant's father murdered his parents and consequently was unable by law to inherit from them. The applicant complained that, as the grandchild he was not eligible to inherit on an intestacy due to the relevant succession legislation which excluded grandchildren from inheriting if a live parent was disqualified from the inheritance. The estate went to the applicant's great aunt.

– Articles 8 and Article 1 of Protocol No 1 both alone and in conjunction with Article 14 of the Convention  
Strike out decision of 5 July 2005 – friendly settlement (£150,000)

**(11) Manole and others v. Moldova, no. 13936/02**

The case concerns the censorship allegedly imposed on journalists working for Moldova's state-run radio and television service. The applicant journalists alleged an administrative practice of interference with freedom of expression as regards their coverage of the political activities of opposition parties.

– Article 10 of the Convention  
Hearing on admissibility and merits scheduled for 7 March 2006.

**(12) Apostolidi and others v. Turkey, no. 45628/99**

Concerns inheritance of property. The property rights of Greek citizens who had inherited real property in Turkey was not recognised by law on the basis of the principle of reciprocity.

– Articles 6 and 14 and Article 1 of Protocol No 1 of the Convention  
Admissible (decision of 4 October 2005).  
Judgment will be delivered at a later date.

**(13) Tarariyeva v. Russia, no. 4353/03**

Complaints of gross medical negligence following the death of Mr Tararijev from post-operative complications while in detention.

– Articles 2, 3 and 13 of the Convention  
Admissible (decision of 11 November 2005).  
Judgment will be delivered at a later date.

**(14) Giuliani and 2 others v. Italy, no. 23458/02**

The applicants alleged that the death of their son/brother, was due to excessive force used by the security forces during a G8 Summit demonstration in Genoa. He had been shot by the carabinieri whose vehicle had been allegedly surrounded by rioters.

– Articles 2, 3, 6 and 13 of the Convention  
The case is pending.

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

(a) Requests for interim measures pursuant to Rule 39 of the Rules of Court were granted in the following cases:

**(1) Evans v. the United Kingdom, no. 6339/05**

The facts of this case are set out above. Rule 39 was applied requesting the Government to take measures to ensure that the frozen embryos were preserved until the determination of the present proceedings.

**(2) N. v. Finland, no. 38885/02**

Threatened deportation to the Democratic Republic of Congo (DRC). The applicant, a citizen of the Democratic Republic of Congo, claimed to have worked as a soldier in former President Mobutu's "Division Spécial Présidentielle" (DSP), which was entrusted with the protection of President Mobutu, his family and property. He arrived in Finland in July 1998 and requested asylum. This was refused as his appeal was considered by the court to be unsubstantiated. A date for the applicant's deportation was fixed, but the Government decided not to deport him following the Court's interim measure under Rule 39 of the Rules of Court. The applicant asserted that if he is deported, besides the risk of being subjected to treatment contrary to Article 3, there would be an interference with his private and family life, as he has a common-law wife – whose asylum application is pending – and a child born in Finland.

– Articles 3 and 8 of the Convention

Admissible (decision 23 September 2003)

Judgment of 26 July 2005 – violation Article 3 of the Convention if the applicant were to be deported to the DRC

**(3) PALADI v. Moldova no. 39806/05**

Conditions of detention. Rule 39 granted to ensure the applicant's continued treatment in a neurology clinic and to prevent his return to prison where specialised facilities for the treatment of the applicant's medical condition are unavailable.

– Articles 3 and 5 of the Convention

The case is pending.

**(4) A.M. v. Finland no. 36326/05**

Rule 39 granted to ensure the applicant, of Kurdish origin, was not sent back to Iran where he feared persecution. The Rule 39 was lifted when the applicant withdrew his application due to the fact that the Finnish Supreme Administrative Court on 14 October 2005 prohibited the execution of the expulsion of the applicant to Iran. The prohibition is in force until the Supreme Administrative Court decides on the applicant's application for a leave to appeal and his appeal, or until the Supreme Administrative Court decides otherwise.

(b) Requests for priority pursuant to Rule 41 of the Rules of Court were granted in 14 cases, including:

**(1) Sarban v. Moldova, no. 3456/05**

The applicant suffers from myelopathy (mielopatie), a spinal cord dysfunction in his neck region which limits his mobility and appears to be life-threatening if proper conditions are not maintained. He had been detained on remand since November 2004. He alleged that he had been repeatedly denied access to medical assistance, including by his family doctor. His detention had been prolonged on several occasions, allegedly in the absence of relevant and sufficient reasons. The District Court President Judge who had ordered and prolonged his detention and had rejected his requests for release was allegedly not an “investigating judge” within the meaning of domestic law and could not order his release. Nor could the applicant obtain an effective review of his detention.

Priority afforded under Rule 41.

– Articles 3, 5(3), 5(4) and 8 of the Convention

Judgment of 4 October 2005 – violation of Articles 3, 5 §§3 and 4 - no violation of Article 8.

**(2) A. and Others v. the United Kingdom, no. 3455/05**

Detention of foreign nationals suspected of terrorist links on the basis of provisions of legislation subsequently declared to be incompatible with the Convention by the House of Lords

Article 5 § 1 of the Convention

The case is pending.

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

Leave to submit third-party comments was given by the President pursuant to Rule 61 § 3 of the Rules of Court in the following cases

**(1) Halko v. Croatia , no 30365/04**

Concerned the imminent extradition to Georgia of a Czech national who was arrested on the international wanted notice issued by Interpol. He claimed that he would be subjected to an unfair trial and risked ill-treatment.

– Articles 3 and 6 §§ 1 and 2 of the Convention

Third party: Czech Government

**(2) D. v. Ireland, 26499/02**

The facts of this case are set out above.

Third parties:-

The Centre for Reproductive Rights (USA)

The Irish Family Planning Association (IRL)  
Pro-Life Campaign (IRL)  
Society for the Protection of Unborn Children (IRL)

**(3) Tysiac v. Poland, 5410/03**

The facts of this case are set out above.

Third parties:-

Helsinki Foundation for Human Rights

The Polish Federation for Women and Family Planning

Legal Adviser for Europe /The Center for Reproductive Rights (USA)

Forum of Polish Women

Kancelaria Adwokacka / (Association of Catholic Families of the Kraków Diocese  
and the Polish Federation of Associations of Catholic Families)

**(4) Lexa v. Slovakia, 54334/00**

The case concerns the unlawful detention and right to a fair trial and the right to the presumption of innocence.

– Article 5 § 1 and Article 6 § 2 of the Convention

Third party:-

World Association of Former Czechoslovak Political Prisoners

**(5) Reinprecht v. Austria, 67175/01**

Unfairness of criminal proceedings. The applicant complains that the hearings on the prolongation of his detention on remand were not held in public.

– Articles 6 § 1 and Article 5 § 4 of the Convention

Third party:

Polish Helsinki Foundation for Human Rights.

**VIII. STATISTICAL INFORMATION**

1. Results for 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

| <b>Judgments delivered in 2005</b> |            |
|------------------------------------|------------|
| Merits                             | 188        |
| Striking out                       | 3          |
| Friendly settlement                | 4          |
| Just satisfaction                  | 1          |
| Revision                           | 0          |
| <b>Total</b>                       | <b>196</b> |

| <b>Chamber decisions adopted in 2005</b> |            |
|--|------------|
| Applications declared admissible         | 164        |
| Applications declared inadmissible       | 167        |
| Applications struck out of the list      | 53         |
| <b>Total</b>                             | <b>384</b> |

| <b>Committee decisions adopted in 2005</b> |             |
|--|-------------|
| Applications declared inadmissible         | 8296        |
| Applications struck out of the list        | 118         |
| <b>Total</b>                               | <b>8414</b> |

| <b>Applications communicated in 2005</b> |            |
|--|------------|
| <b>Total</b>                             | <b>611</b> |

|   |             |
|---|-------------|
| <b>Total cases finalised in 2005</b> (judgments*, inadmissibility and strike-out decisions) | <b>8829</b> |
|---|-------------|

\* Not including judgments on just satisfaction and revision but including judgments which are not yet final. Some judgments dealt with a number of joined applications.

**APPENDIX 2**

|              | <b>Chambers</b> |            |              |            |              | <b>Committees</b> |            |
|--------------|-----------------|------------|--------------|------------|--------------|-------------------|------------|
|              | Judgments       | Admissible | Inadmissible | Struck out | Communicated | Inadmissible      | Struck out |
| January      | 8               | 3          | 7            | 6          | 17           | 664               | 7          |
| February     | 14              | 4          | 7            | 4          | 11           | 288               | 4          |
| March        | 17              | 16         | 17           | 9          | 46           | 483               | 3          |
| April        | 4               | 8          | 3            | 1          | 18           | 693               | 13         |
| May          | 19              | 18         | 35           | 3          | 34           | 849               | 33         |
| June         | 19              | 19         | 18           | 2          | 32           | 755               | 7          |
| July         | 14              | 6          | 6            | 3          | 24           | 559               | 4          |
| August       | 4               | 3          | 8            | 5          | 42           | 502               | 2          |
| September    | 9               | 18         | 8            | 6          | 91           | 1026              | 15         |
| October      | 34              | 32         | 20           | 12         | 80           | 868               | 10         |
| November     | 36              | 27         | 20           | 1          | 109          | 900               | 10         |
| December     | 18              | 10         | 18           | 1          | 107          | 709               | 10         |
| <b>Total</b> | <b>196</b>      | <b>164</b> | <b>167</b>   | <b>53</b>  | <b>611</b>   | <b>8296</b>       | <b>118</b> |

### APPENDIX 3

| <b>Applications pending on 31 December 2005</b> |              |
|---|--------------|
|   |              |
| <b>Total applications not yet examined</b>      | <b>9385</b>  |
|   |              |
| <b>Adjourned/Communicated for information</b>   | <b>288</b>   |
|   |              |
| <b>Communicated for observations</b>            | <b>1188</b>  |
|   |              |
| <b>Admissible</b>                               | <b>197</b>   |
|   |              |
| <b>Judgments not yet final</b>                  | <b>99</b>    |
|   |              |
| <b>TOTAL APPLICATIONS PENDING</b>               | <b>11157</b> |
| (Chamber: 4666)                                 |              |
| (Committee: 6491)                               |              |

## APPENDIX 4

Chart 1: Judgments delivered in 2005

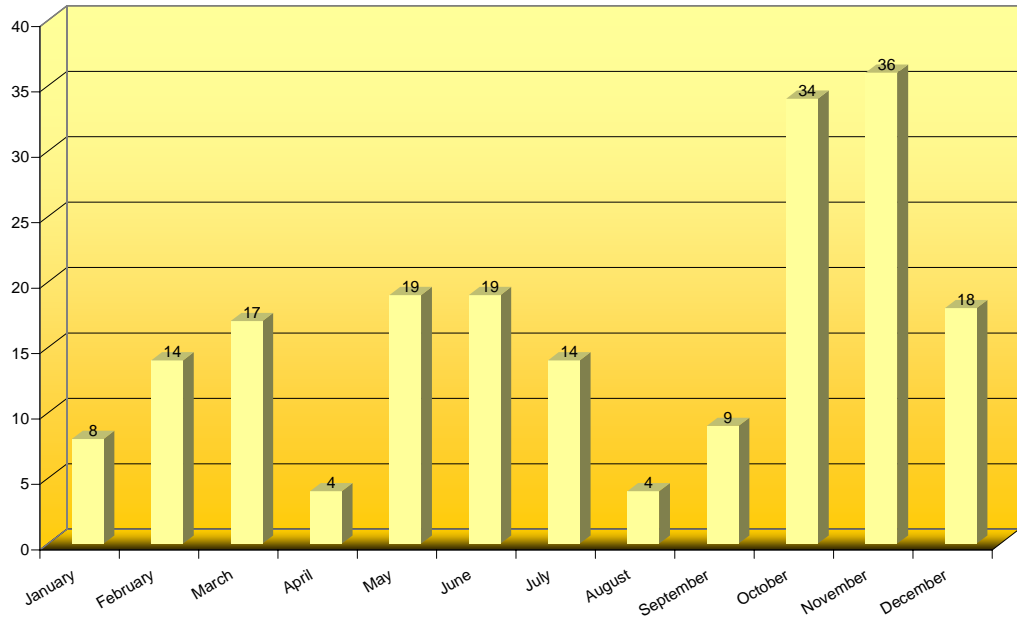
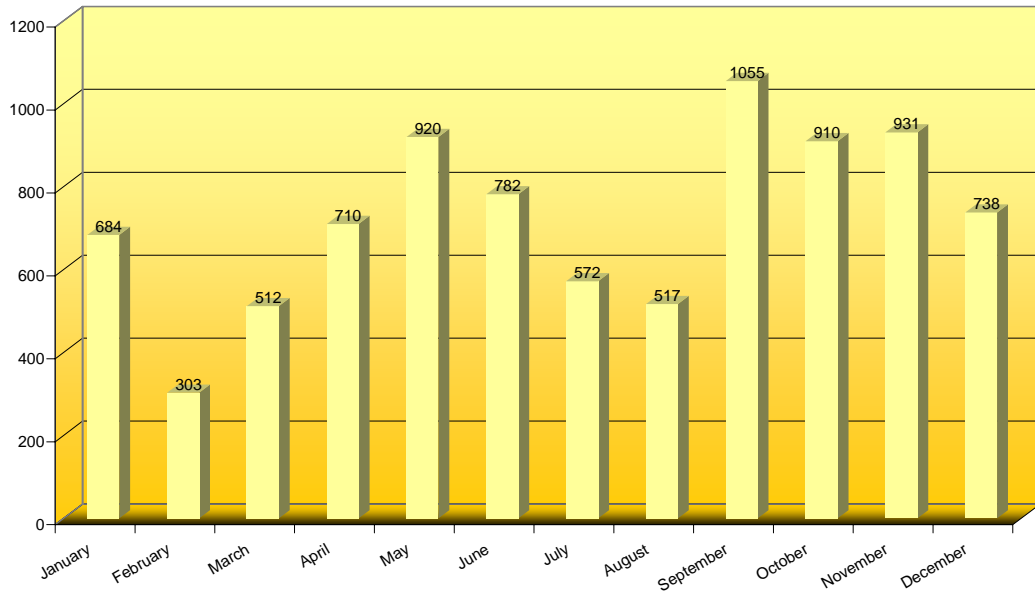
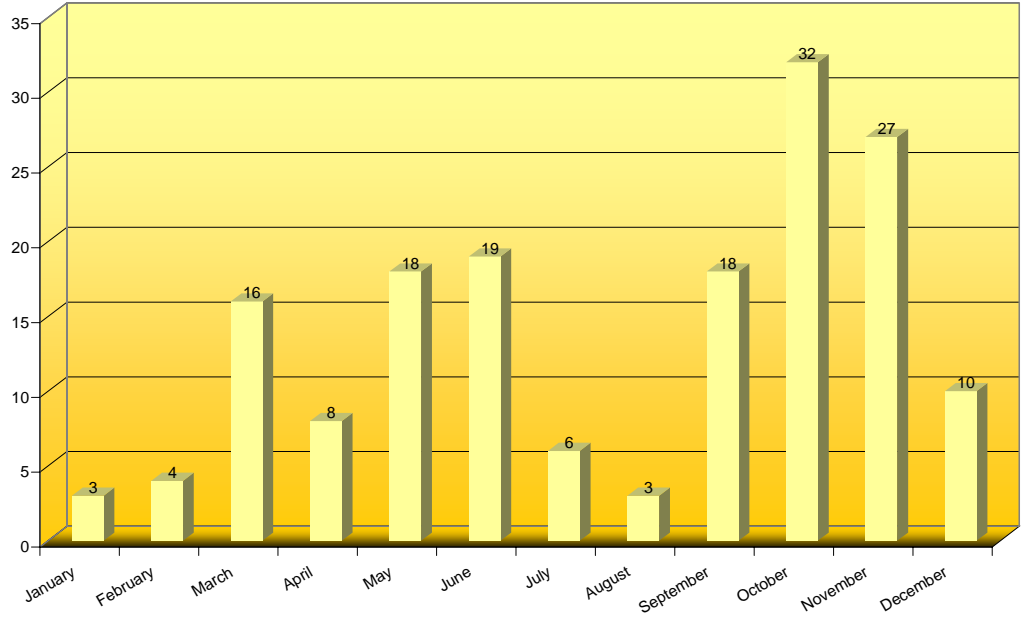


Chart 2: Inadmissibility and strike-out decisions adopted in 2005



**Chart 3: Admissibility decisions adopted in 2005**



**Chart 4: Applications communicated in 2005**

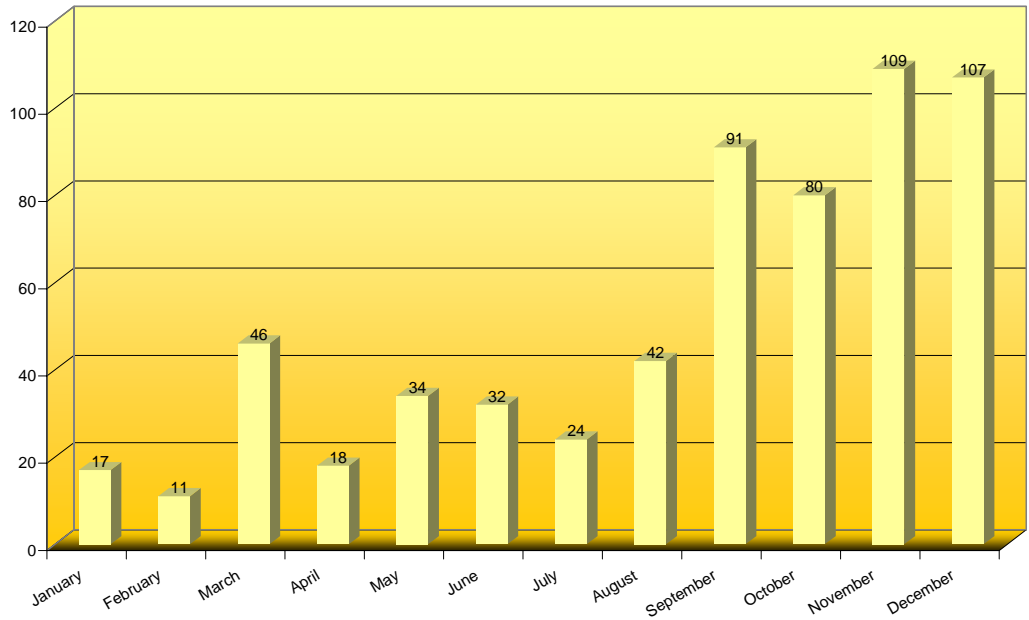


Chart 5: Applications pending on 31 December 2005 by year of lodging

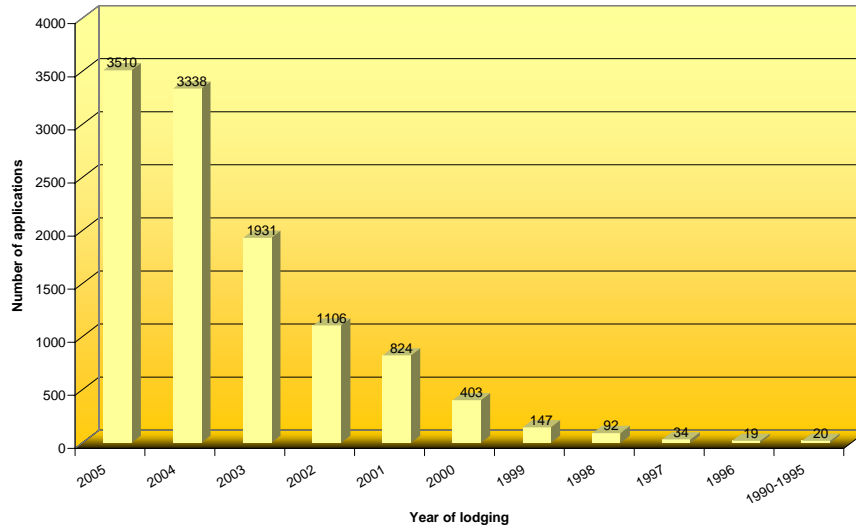


Chart 6: Applications pending on 31 December 2005 by State

