

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



SECOND SECTION

ANNUAL ACTIVITY REPORT 2002

January 2003

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## I. INTRODUCTION

In 2002, the Section held 40 Chamber sessions. Oral hearings were held in five cases and delegates took evidence in two cases. The Section delivered 159 judgments, of which 137 concerned the merits. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 101 cases and 26 judgments were delivered under this procedure.

Of the cases examined by a Chamber

- (a) 125 applications were declared admissible;
- (b) 135 applications were declared inadmissible;
- (c) 24 applications were struck out of the list; and
- (d) 284 applications were communicated to the State concerned for observations.

In addition, the Section held 78 Committee sessions. 4,705 applications were declared inadmissible and 52 applications were struck out of the list. The total number of applications rejected by a Committee represented 96% of the inadmissibility and strike-out decisions taken by the Section during the year.

At the end of the year, 7,785 applications were pending before the Section.

## II. COMPOSITION OF THE SECTION

Jean-Paul **Costa** (French), *President*,  
András **Baka** (Hungarian), *Vice-President*,  
Luzius **Wildhaber** (Swiss),  
Gaukur **Jörundsson** (Icelandic),  
Loukis **Loucaides** (Cypriot),  
Corneliu **Bîrsan** (Romanian),  
Karel **Jungwiert** (Czech),  
Volodymyr **Butkevych** (Ukrainian),  
Wilhelmina **Thomassen** (Dutch),  
Mindia **Ugrekhelidze** (Georgian),  
Antonella **Mularoni** (San Marinese), *Judges*,

Sally **Dollé** (British), *Registrar*,  
Lawrence **Early** (British/Irish), *Deputy Registrar*.

### III. HEARINGS

(a) Hearings were held in the following cases:

**(1) nos. 30668/96, 30671/96 and 30678/96 Wilson, and the National Union of Journalists, Palmer, Wyeth and the National Union of Rail Maritime and Transport Workers and Doolan and Others v. the United Kingdom**

The applicants refused financial incentives with amended personal contracts in exchange for de-recognition of their unions. They claimed that the conditions of their employment significantly deteriorated compared with colleagues who renounced their right to union representation.

– Articles 11, 10 and 14 of the Convention

A hearing on the merits was held on 30 January 2002. In a judgment of 2 July 2002, the Court found a violation of Article 11 in that the financial incentives scheme constituted a restraint on the use by employees of union membership to protect their interests, with the result that it was possible for an employer effectively to undermine or frustrate a trade union's ability to strive for the protection of its members' interests. No separate issues arose under Articles 10 and 14.

**(2) no. 38621/97 Zehnalová and Zehnal v. the Czech Republic**

The first applicant is physically disabled and the second applicant is her husband. They complained that the public buildings in their home town were not equipped to allow disabled persons access, notwithstanding domestic law requirements. The applicants requested the administrative authorities and then the courts to rule that the certificates declaring the buildings to be in conformity with the law were invalid. No decision on the merits of the complaints was taken.

– Articles 8, 13 and 14, as well as Articles 6 and 13, of the Convention

A hearing on admissibility and merits was held on 19 February 2002. The Court declared the case inadmissible on 14 May 2002. In particular, the applicants' primary complaint under Article 8 that the situation infringed their right to respect for their private life was found to be incompatible *ratione materiae*, given that on the facts and evidence adduced the applicants were unable to establish the existence of a positive obligation on the part of the authorities to secure their right to respect for private life.

**(3) no. 35373/97 A. v. the United Kingdom**

The applicant complained under Article 6 that she was unable to sue an M.P. for defamatory remarks he made about her and her children during a

House of Commons debate, since the M.P. was protected by parliamentary privilege. The press reports on the M.P.'s statements were protected by qualified privilege. The applicant also maintained that the circumstances of her case breached Articles 8, 13 and 14.

– Articles 6, 8, 13 and 14

A hearing on admissibility and merits was held on 5 March 2002. The case was declared admissible. In a judgment of 17 December 2002 the Court found that the impugned rule of parliamentary immunity was a common feature of Member States' domestic law and policy. The rule pursued a legitimate aim, was narrow in its scope and application, and could not be considered a disproportionate restriction on the applicant's access to court. Accordingly there was no violation of Article 6 and no violation of the other Articles invoked.

**(4) no. 56547/00 P., C. and S. v. the United Kingdom**

The applicants complained of the emergency removal into care of their daughter (the third applicant) immediately after her birth and the subsequent care and freeing for adoption proceedings. They maintained that the proceedings were conducted unfairly since they had no legal representation during the freeing for adoption proceedings, their lawyer having withdrawn from the case during the care proceedings, and they were refused an adjournment to secure new legal representation. The applicants also complained that the adoption measures taken with respect to their child deprived them of any further family life and that no provision was made for continuing any form of direct contact after the adoption.

– Articles 6 § 1 and 8 of the Convention

A hearing on the merits was held on 26 March 2002. In a judgment of 16 July 2002 the Court found a violation of Article 6 § 1 in respect of P. and C. because of, *inter alia*, the refusal of an adjournment to allow them to find a legal representative to argue their case in the freeing for adoption proceedings. It also found a violation of Article 8 in respect of P. and C as regards the manner of removal of S. at birth. The Court also found a violation of Article 8 as regards all the applicants having regard to its findings on the unfairness of the subsequent freeing for adoption proceedings, in particular their inability to participate effectively in those proceedings without the assistance of a lawyer.

**(5) no. 33400/96 Ernst and Others v. Belgium**

The case concerned the seizure from the applicants' homes and offices of documents relating to confidential matters leaked from an appeal court. The applicants (journalists and their representative professional organisations) lodged a criminal complaint against the judge who ordered the search. The

Court of Cassation subsequently ruled that the applicants could not introduce a civil party application alongside the criminal complaint. The applicants then sought damages from the State for the prejudice which they had suffered on account of the search and seizure measures. These civil proceedings are still pending.

– Articles 8, 10, 13 and 6 § 1 with 14 of the Convention

A hearing on admissibility and merits was held on 25 June 2002. The case was declared admissible as regards the individual applicants' complaints. Judgment will be delivered at a later date.

**(6) no. 49636/99 Chevrol v. France**

The applicant, a French national who qualified as a doctor in Algeria, challenged a refusal to admit her to the French Medical Association (*Ordre des Medecins*) and to authorise her to practise medicine in France since she did not have a French diploma. In the domestic proceedings, the *Conseil d'Etat* considered itself bound by the Executive's opinion that a bi-lateral agreement between France and Algeria on mutual recognition of diplomas awarded in Algeria and France, relied on by the applicant, could not be considered in force since the reciprocity requirement contained in Article 55 of the Constitution had not been complied with. The applicant complained that the *Conseil d'Etat* was not an independent tribunal with full jurisdiction since it considered itself bound by the Executive's opinion on the reciprocity issue.

– Article 6 § 1 of the Convention

A hearing on the merits was held on 22 October 2002. Judgment will be delivered at a later date.

(b) Fact-finding missions were held in the following cases:

**(1) no. 25760/94 Ipek v. Turkey**

The case concerns the disappearance of the applicant's two sons who were allegedly last seen in custody following a military operation in their village. The Government deny that any such an operation was carried out on that date. The hearing of witnesses was held in Turkey in November 2002.

**(2) no. 42023/98 Naumenko v. Ukraine**

The applicant was sentenced to death. However the sentence was subsequently commuted to life imprisonment. The applicant complained of the conditions of his detention under Article 3, in particular the forced administration of tranquillisers and electric shocks, as well as physical and

verbal violence. A fact-finding mission was carried out in the prison in question in September 2002.

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

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

- no. 39343/98) Kleyn and Others v. the Netherlands**
- no. 39651/98) Mettler Toledo BV v. the Netherlands**
- no. 46664/99) Berndsen v. the Netherlands**
- no. 43147/98) Raymakers v. the Netherlands**

All applications concern the Council of State's decision to reject the applicants' opposition to a decision approving the routing of a railway line running from Rotterdam to the border with Germany. The applicants complained that the Council of State had previously acted in an advisory capacity as regards the relevant legislation and then subsequently acted in a judicial capacity, in breach of the Article 6 requirement that a tribunal must be independent and impartial.

#### **V. INTERESTING JUDGMENTS AND DECISIONS**

Of the judgments delivered and decisions adopted by the Section this year (apart from those already mentioned above), the following may be noted:

##### **(1) no. 34462/97 Wessels-Bergervoet v. the Netherlands**

The applicant complained that she received a reduced pension because she was married to a man who was not insured for a period of time since he had been working abroad. However, a married man in the same situation would not have had his pension reduced. She maintained, in particular, that the reduction in her pension was the result of discriminatory treatment. (Article 14 and Article 1 of Protocol No. 1.)

Judgment of 4 June 2002 – violation of Article 1 of Protocol No. 1 combined with Article 14 (“no objective and reasonable justification” for the gender-based distinction).

**(2) no. 32576/96 Wynen v. Belgium**

The applicants were convicted of the unauthorised installation of high-technology medical equipment. They complained that, *inter alia*, they were not given a copy of the opinion of the public prosecutor before the Court of Cassation, that their statement of grounds of appeal were disallowed for failure to comply with a two-month time limit and that they were not informed of the date of the Court of Cassation hearing (Article 6 § 1).

Judgment of 5 November 2002 – violation in so far as the applicants, unlike the respondent, were alone obliged to comply with a time limit for filing pleadings with the result that they were unable to reply to the respondent's pleadings already lodged with the Court of Cassation.

**(3) no. 51279/99 Colombani and Others v. France**

The *Le Monde* newspaper, its editor and a journalist were convicted of insulting a foreign Head of State (Articles 10 and 6 § 1).

Judgment of 25 June 2002 – violation of Article 10 in that the application of Article 36 of the Law of 29 July 1881 on freedom of the press sanctioning insults against Heads of State was in the circumstances a disproportionate interference with the applicants' right to freedom of expression.

**(4) no. 45526/99 Gayduk (and 20 other applications) v. Ukraine**

The case concerned the erosion through inflation of the applicants' savings deposited with the Ukrainian Savings Bank and the applicants' contention that the State had an obligation to protect the value of the savings (Article 1 of Protocol No. 1 on its own and in conjunction with Articles 14 and 13).

Decision of 2 July 2002 – case inadmissible. The Court found the primary complaint under Article 1 of Protocol No. 1 incompatible *ratione materiae*, being of the view that the State had no Convention obligation to protect savings against inflation.

**(5) no. 38743/97 Demuth v. Switzerland**

The case concerned the refusal of the Federal Council to authorise the broadcast of the applicant's cable television programme (CAR TV) on the basis that the programme content failed to strike a proper balance between purely commercial aims and public interest information (Article 10).

Judgment of 5 November 2002 – no violation of Article 10, in that commercial speech enjoys less protection than political speech and therefore a wider margin of appreciation could be conceded to the State in this

particular case; the Court further noted that the licensing authority had not ruled out the possibility of granting a licence if the applicant were to modify the proposed programme content.

**(6) no. 42295/98 Nerva and Others v. the United Kingdom**

The case concerned unsuccessful legal proceedings brought by the applicants, all waiters, to claim entitlement to gratuities included in cheque and credit card payments made by customers when settling their bills. The gratuities, unlike cash gratuities, were used by their employer to calculate the applicants' statutory minimum wage. The applicants contended in the Convention proceedings that the dismissal of their claim violated, *inter alia*, their property right under Article 1 of Protocol No. 1.

Judgment of 24 September 2002 – no violation, in that the ownership of the gratuities at issue passed to the applicants' employer and that the applicants could not base a legitimate expectation to acquire the gratuities on the basis of the purported intention of customers.

**(7) no. 37971/97 Sociétés Colas Est and Others v. France**

The applicants were large civil engineering companies which were the subject of an extensive administrative investigation resulting in the search of their premises and the seizure of thousands of documents. The applicants claimed that the manner in which the searches was conducted violated their right to respect for their "homes" (Article 8).

Judgment of 16 April 2002 – violation, the Court being of the view that the notion of "home" extended to places of business; in the instant case, it considered that the powers of the administrative authorities to search the applicants' premises were too wide and that the authorities had intervened without a warrant and without a senior police officer being present during the search and seizure procedures.

**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 (Articles 2 and 3):

**(1) no. 58510/00 Venkadajalasarma v. the Netherlands**

The applicant, a Sri Lankan Tamil seeking asylum, complained that his expulsion to Sri Lanka would expose him to a real risk to his life and well-being due to hostilities between the Tamil Tigers (the LTTE) and Sri Lankan Government forces.

**(2) no. 61350/00 Thampibillai v. the Netherlands**

The applicant, a Sri Lankan Tamil asylum seeker, complained that his expulsion to Sri Lanka would expose him to a real risk on account of hostilities between the Tamil Tigers and Sri Lankan Government forces. His father was killed and his brother was being actively sought.

**(3) no. 36378/02 Shamayev and 12 Others v. Georgia and Russia**

Rule 39 was applied and then lifted upon receipt of Convention guarantees from the Russian Government. The case concerned 13 Chechens who were held in detention in Georgia on suspicion of terrorist activities and whose extradition was sought by the Russian authorities.

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

**(1) no. 70749/01 Haioun v. France**

The case concerned proceedings brought by a former customs officer to have his pension rights reinstated. The applicant complains under Article 1 of Protocol No. 1 of an infringement of his property rights and under Article 6 § 1 of the length of proceedings.

**(2) no. 71099/01 Monory v. Hungary and Romania**

The case concerns divorce proceeding in Hungary following which the applicant's Romanian wife returned to Romania. She effectively bars the applicant (a Hungarian) from having any access to their child. Under Hungarian law the child was considered to have been unlawfully removed to Romania but under the latter country's law the child's presence in Romania is lawful. The applicant invokes Articles 6 § 1, 8, Article 5 of Protocol No. 7, Article 2 of Protocol No. 4 and Article 13.

**(3) no. 71503/01 Assanidze v. Georgia**

The applicant is detained in the autonomous Republic of Adjara under Georgian Convention responsibility. The local authorities refuse to execute a pardon which the applicant was given by the President of Georgia (October 1999) and to release him following his acquittal by the Supreme Court (January 2001). The applicant invokes, *inter alia*, Article 5.

- (4) **no. 78028/01 Pini and Bertani v. Romania**  
**no. 78030/01 Manera and Atripaldi v. Romania**

The cases concern the refusal by the authorities to execute final judgments concerning the adoption by the applicants of children. The applicants' second final judgment in their favour also remains unexecuted. The applicants invoke, *inter alia*, Articles 5 and 8 of the Convention.

- (5) **no. 36378/02 Shamayev and 12 Others v. Georgia and Russia**  
(see page 8 above)

## **VII. THIRD-PARTY INTERVENTION (ARTICLE 36 AND RULE 61)**

(a) The Contracting State of the nationals concerned exercised the right to intervene in the following applications (Article 36 § 1 of the Convention and Rule 61 § 2 of the Rules of Court):

- no. 43685/98 Iordanou v Turkey**  
**no. 46755/99 Iordanou v. Turkey**  
**no. 46159/99 Rock Ruby Hotels Ltd. v. Turkey**

(b) The President of the Section granted the requests of a number of Contracting States to intervene in the following cases (Article 36 § 2 of the Convention and Rule 61 § 3 of the Rules of Court):

- no. 35373/97 A. v. the United Kingdom**  
(see page 2 above)
- no. 39343/98 Kleyn and Others v. the Netherlands**  
**no. 39651/98 Mettler Toledo BV v. the Netherlands**  
**no. 46664/99 Berndsen v. the Netherlands**  
**no. 43147/98 Raymakers v. the Netherlands**  
(see page 5 above)

**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 2002</b>	
Merits	137
Striking out	3
Friendly settlement	18
Just satisfaction	1
Revision	0
<b>Total</b>	<b>159</b>

<b>Chamber decisions adopted in 2002</b>	
Applications declared admissible	125
Applications declared inadmissible	135
Applications struck out of the list	24
<b>Total</b>	<b>284</b>

<b>Committee decisions adopted in 2002</b>	
Applications declared inadmissible	4705
Applications struck out of the list	52
<b>Total</b>	<b>4757</b>

<b>Applications communicated in 2002</b>	
<b>Total</b>	<b>284</b>

<b>Total applications finalised in 2002</b> (judgments*, inadmissibility and striking-out decisions)	<b>5083</b>
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\* 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

	Chambers					Committees	
	Judgments	Admissible	Inadmissible	Struck out	Communicated	Inadmissible	Struck out
January	3	4	16	2	21	345	1
February	28	10	9	0	17	164	4
March	21	18	6	3	31	519	9
April	13	9	11	1	45	421	5
May	10	14	6	2	17	322	8
June	7	11	17	3	26	242	2
July	27	12	27	1	19	287	3
August	0	1	2	3	7	58	1
September	3	19	13	4	30	779	5
October	11	5	6	1	26	795	6
November	19	13	3	4	24	417	4
December	17	9	19	0	21	356	4
<b>Total</b>	<b>159</b>	<b>125</b>	<b>135</b>	<b>24</b>	<b>284</b>	<b>4705</b>	<b>52</b>

### APPENDIX 3

<b>Applications pending on 31 December 2002</b>	
<b>Total applications not yet examined</b>	<b>7065</b>
<b>Adjourned/Communicated for information</b>	<b>12</b>
<b>Communicated for observations</b>	<b>491</b>
<b>Admissible</b>	<b>171</b>
<b>Judgments not yet final</b>	<b>46</b>
<b>TOTAL APPLICATIONS PENDING</b>	<b>7785</b>
(Chamber: 1767)	
(Committee: 5298)	

## APPENDIX 4

Chart 1: Judgments delivered in 2002

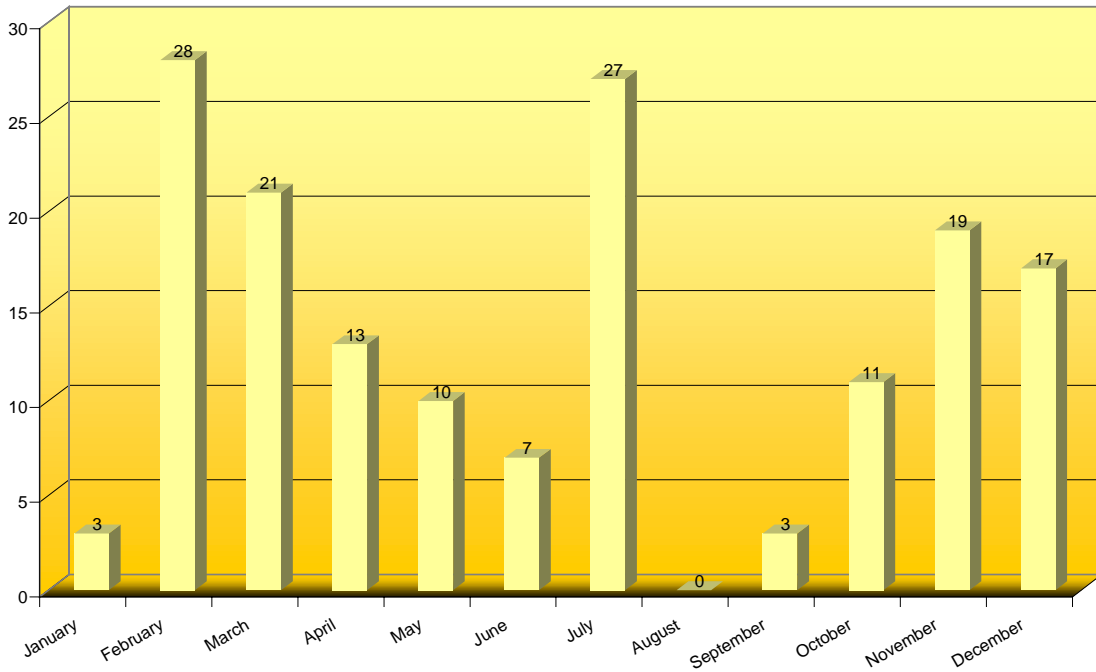
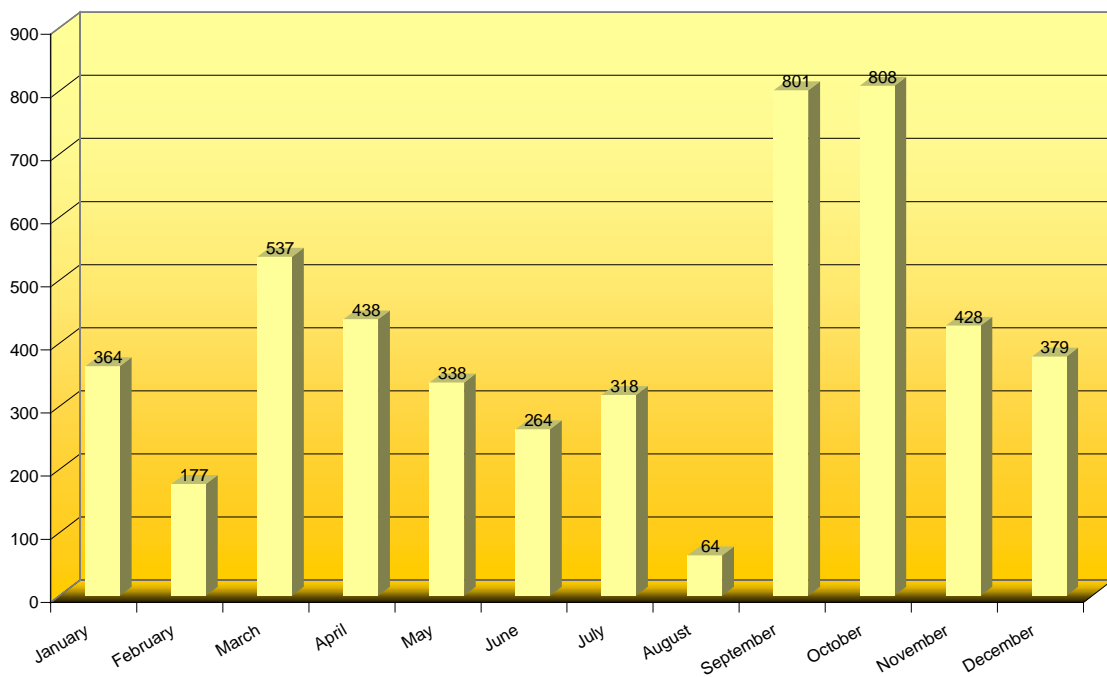


Chart 2: Inadmissibility and strike-out decisions adopted in 2002



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Chart 3: Admissibility decisions adopted in 2002

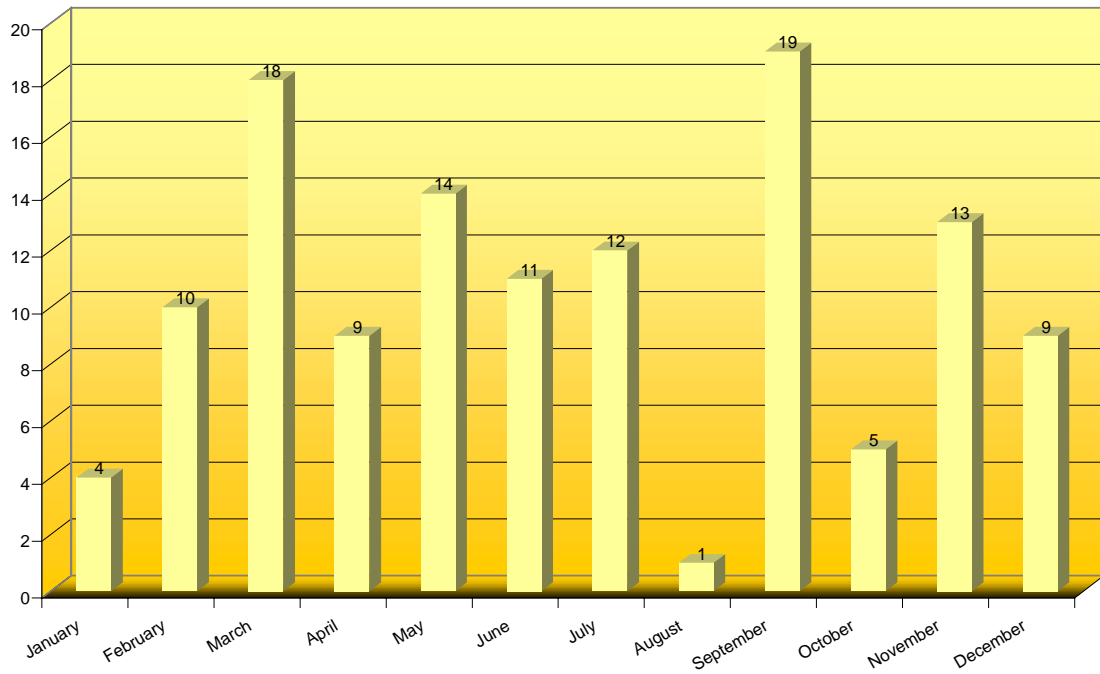


Chart 4: Applications communicated in 2002

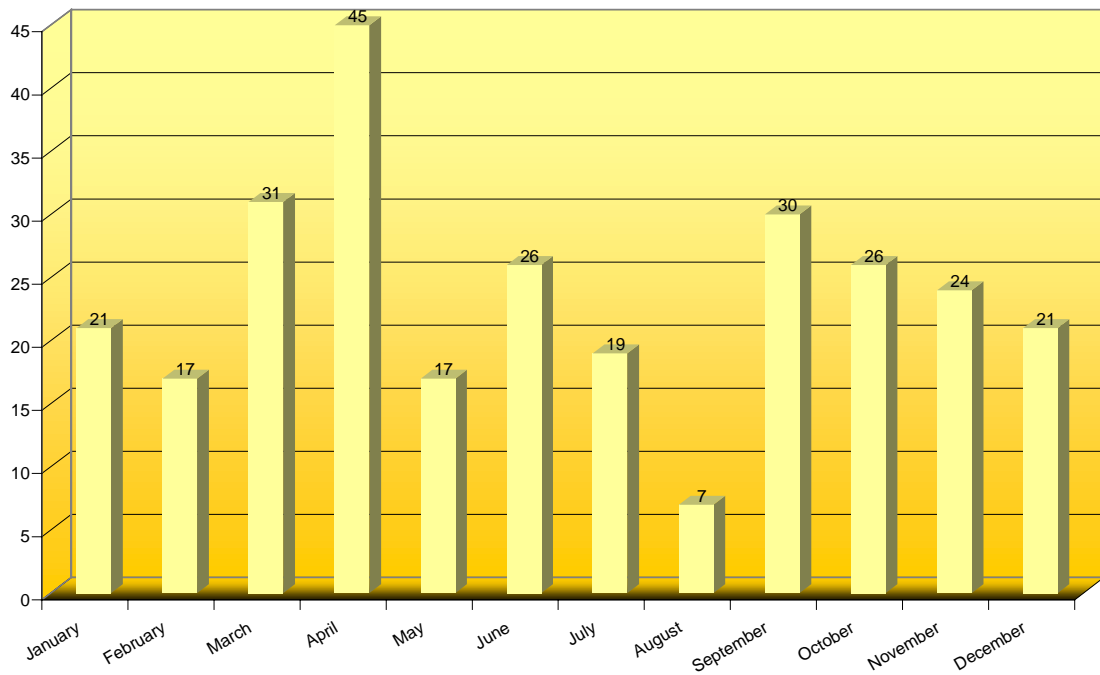


Chart 5: Applications pending on 31 December 2002 by year of lodging

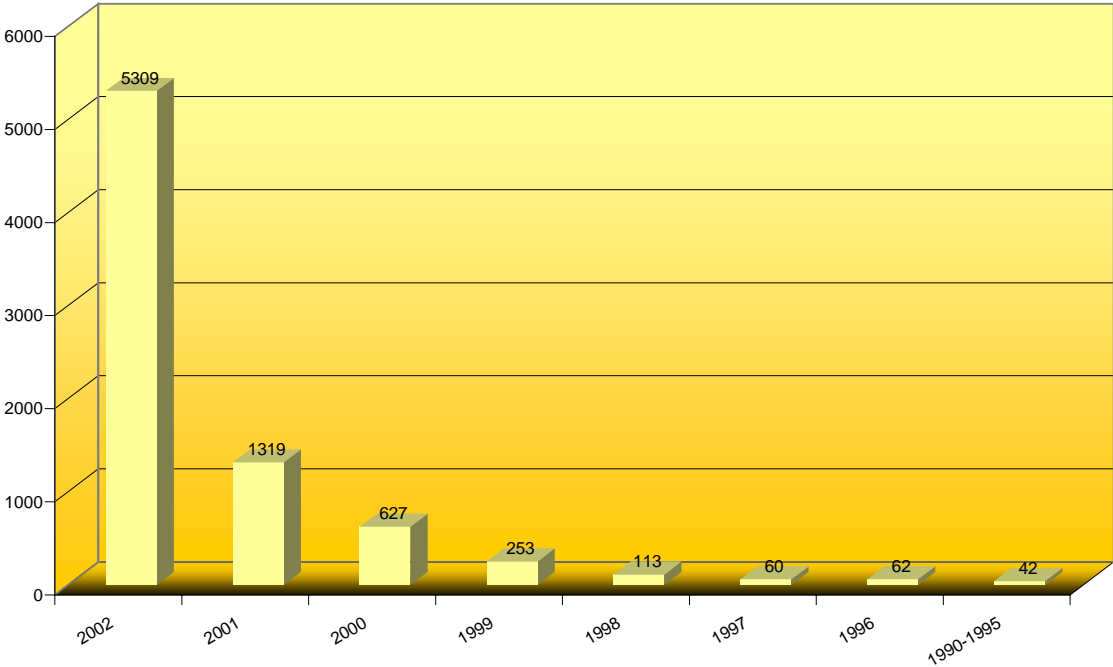


Chart 6: Applications pending on 31 December 2002 by State

