

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



FOURTH SECTION

ANNUAL ACTIVITY REPORT 2003

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I. INTRODUCTION

In 2003, the Section held 38 Chamber sessions. Oral hearings were held in eight cases and delegates took evidence in one case, *Taniş and others v. Turkey*, no. 65899/01.

The Section delivered 155 judgments, of which 104 concerned the merits and 47 concerned friendly settlements. Four cases were struck out of the list by a judgment. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 262 cases and 60 judgments were delivered under this procedure.

Of the cases examined by a Chamber

- (a) 288 applications were declared admissible;
- (b) 113 applications were declared inadmissible;
- (c) 112 applications were struck out of the list; and
- (d) 351 applications were communicated to the State concerned for observations.

In addition, the Section held 58 Committee sessions. 3,566 applications were declared inadmissible and 35 applications were struck out of the list. The total number of applications rejected by a Committee represented over 94 % of the inadmissibility and strike-out decisions taken by the Section during the year.

At the end of the year, 8,461 applications were pending before the Section.

II. COMPOSITION OF THE SECTION

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish), *Vice-President*,
Viera **Strážnická** (Slovakian),
Marc **Fischbach** (Luxemburger),
Josep **Casadevall** (Andorran),
Rait **Maruste** (Estonian),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego**¹ (Spanish),
Elisabet **Fura-Sandström**² (Swedish), *Judges*,

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

III. HEARINGS

(a) Hearings were held in the following cases:

(1) **Sofri and others v. Italy, no. 37235/97**

The case concerned the trial of the applicants for the assassination of a police inspector in May 1972. They were charged in 1988 on the strength of the testimony of an informer who described how he had carried out the shooting and implicated the applicants. The trial took place in 1989 and resulted in the applicants' conviction. Since then the proceedings have involved three decisions of the Court of Cassation leading to the case being sent back for retrial as well as revision proceedings. The proceedings came to an end in November 2000 with a further decision of the Court of Cassation in respect of the revision proceedings. The applicants complained *inter alia* of the unfairness of the criminal proceedings against them and of the national courts' lack of impartiality. They also complained of the unfairness of the proceedings on their application for a retrial and of their inability to have the wife of the informer cross-examined.

– Articles 5 § 2 and 6 of the Convention

A hearing on admissibility and merits was held on 4 March 2003. Inadmissible (decision of 27 May 2003).

¹ Javier **Borrego Borrego** replaced Antonio **Pastor Ridruejo** in January 2003.

² Elisabet **Fura-Sandström** replaced Elisabeth **Palm** in July 2003.

(2) H.L. v. the United Kingdom, no. 45508/99

The case concerns the “informal” admission of the applicant to a psychiatric institution – a category of admission to which the numerous safeguards of the Mental Health Act of 1983 do not apply – and his detention therein for a period of six months. He is a severely autistic man who was unable to give his consent to being admitted. The authorities decided to detain him after a crisis when he had become violent. His internment was considered lawful by the House of Lords on the basis that it was justified by the law of necessity. He complained under Article 5 § 1 that he was unlawfully detained and that his detention was not justified under Article 5 § 1(e) because he was not of unsound mind. He further maintained that he was discriminated against as an “informal” patient.

– Articles 5 and 14 of the Convention

Admissible (decision of 10 September 2002). A hearing on the merits was held on 27 May 2003. Judgment will be delivered at a later date.

(3) Bäck v. Finland, no. 37598/97

The applicant and another person agreed in 1988 and 1989 to guarantee a bank loan granted to N. As N was unable to repay the loan, the applicant and his co-guarantor were required to pay the bank about 19,000 euros. In 1996 the District Court granted N’s request for debt adjustment having regard to the decrease in his resources. The applicant’s claim against N was reduced to around 360 euros. The applicant complained that the adjustment of N’s debt deprived him of his property without compensation.

– Article 1 of Protocol No. 1

Admissible (decision of 22 October 2002). A hearing on the merits was held on 1 July 2003. Judgment will be delivered at a later date.

(4) Pla and Puncernau v. Andorra, no. 69498/01

The applicants complained that the decisions given by the High Court of Justice and the Constitutional Court in the context of a succession dispute discriminated between natural children and adopted children. The courts did not consider that an adopted child could be regarded under the law of Andorra as the issue of “a legitimate and canonical marriage” for the purpose of succession law.

– Articles 8 and 14 of the Convention

Admissible (decision of 27 May 2003). A hearing on the merits was held on 7 October 2003. Judgment will be delivered at a later date.

(5) Bruncrona v. Finland, no. 41673/98

The case concerns the protection of property rights with regard to the loss of fishing rights in respect of some islands and surrounding water area. Inheritance tax and wealth tax were imposed on the heirs to the property in spite of the fact that the State was registered as the lawful owner.

– Article 1 of Protocol No. 1

Admissible (decision of 4 March 2003). A hearing on the merits was held on 14 October 2003. Judgment will be delivered at a later date.

(6) Martinez Sala and others v. Spain, no. 58438/00

The case concerns alleged ill-treatment in police custody in the framework of an investigation by the police relating to terrorism during the Barcelona Olympic Games in 1992.

– Articles 3 and 6 § 1 of the Convention

A hearing on the admissibility and merits was held on 18 November 2003. The case was declared admissible. Judgment will be delivered at a later date.

(7) AB Kurt Kellermann v. Sweden, no. 41579/98

The case concerns *inter alia* a claim by the applicant company that it did not have a fair hearing by an impartial tribunal. A dispute, concerning freedom of association and a collective agreement between employers, had been decided by a Labour Court made up of only two professional judges – two of the seven members of the court participating in the case having been nominated by employers' organisations and two by employees' organisations.

– Article 6 § 1 of the Convention

Admissible (decision of 1 July 2003). A hearing on the merits was held on 2 December 2003. Judgment will be delivered at a later date.

(8) Hirst v. the United Kingdom, no. 74025/01

The case concerns the legislative provisions prohibiting prisoners from voting. The applicant complains that, as a convicted prisoner, he is barred by Section 3 of the Representation of the People Act 1983 from voting in parliamentary and local elections.

– Article 3 of Protocol No. 1, alone and in conjunction with Article 14 of the Convention, and Article 10 of the Convention

Admissible (decision of 8 July 2003). A hearing on the merits was held on 2 December 2003. Judgment will be delivered at a later date.

(b) A fact-finding mission was held in the following case:

Tanis and others v. Turkey, no. 65899/01

The application was filed by close relatives of the President and Secretary of a political party in Turkey (Hadep). The victims were allegedly taken into custody at the end of January 2001 at the Silopi district gendarmerie and have not been seen since. The gendarmerie at first denied that they had been detained. Subsequently, the authorities issued a statement saying that the two persons in question had been present as visitors at the gendarmerie and had then left.

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

Admissible (decision of 11 September 2001). A fact-finding mission took place in April 2003. The Court's delegation was composed of Judges Bratza (President), Pellonpää and Maruste, assisted by the Registrar, Mr. O'Boyle. Judgment will be delivered at a later date.

IV. CASES RELINQUISHED TO THE GRAND CHAMBER

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

(1) Cooper v. the United Kingdom,³ no. 48843/99

The case concerned the fairness of air force court martial proceedings under the Armed Forces Act 1996 and the independence and impartiality of a Royal Air Force court martial.

– Article 6 § 1 of the Convention

(2) Grieves v. the United Kingdom,⁴ no. 57067/00

The case concerned the fairness of Navy court martial proceedings and the independence and impartiality of the court martial.

– Article 6 § 1 of the Convention

³ Judgment in the cases of Cooper v. the United Kingdom was delivered by the Grand Chamber on 16 December 2003.

⁴ Judgment in the case of Grieves v. the United Kingdom was delivered by the Grand Chamber on 16 December 2003.

V. OTHER CASES OF INTEREST

Of the judgments delivered and decisions adopted by the Section in 2003, other cases of interest include the following:

(1) Peck v. the United Kingdom, no. 44647/98

The applicant attempted suicide in a public street and a closed circuit television (CCTV) operator who had seen what was happening notified the police, who then saved the applicant's life. The local authority later disclosed the footage directly through its own publication and to the media in order to advertise the beneficial impact of CCTV. As a result the footage and stills were widely broadcast with the applicant's identity not being properly masked. He was identified by family, friends and neighbours. He complained of a serious interference with private life and the lack of an effective remedy under national law.

– Articles 8 and 13 of the Convention
Judgment of 28 January 2003 – violation.

(2) Lesnik v. Slovakia, no. 35640/97

The applicant complained that his right to freedom of expression was violated in that he was convicted for having criticised the actions of a public prosecutor. He had *inter alia* accused him in various letters of accepting a bribe not to prosecute someone, of being high-handed and of being guilty of wrongful behaviour. The courts considered that the applicant had defamed the prosecutor. He was given a suspended sentence.

– Article 10 of the Convention
Judgment of 25 February 2003 – no violation.

(3) Iglesias Gil and U.I. v. Spain, no. 56673/00

The applicant complained of the lack of steps taken by the Spanish authorities to enforce court decisions concerning her son's custody after the father fled with the son (aged 14 months) to the United States. She was prevented from seeing the child for more than three years. She alleged that the authorities had done little to assist her to secure the return of the child. The courts had refused to issue an international warrant against the husband, since under Spanish law a father could not be charged with kidnapping his own child but could only be charged with the lesser offence of disobedience to a court order which was not an extraditable offence. The applicant had been criticised by the courts for her determination to bring the father to justice.

– Article 8 of the Convention
Judgment of 29 April 2003 – violation.

(4) Appleby and others v. the United Kingdom, no. 44306/98

The applicants complained that they had been inhibited from meeting in their town centre – an extensive and privately owned shopping mall – to impart information and ideas about proposed municipal plans to build in a green area. They had been prevented from giving out leaflets and collecting signatures for a petition. The case raised issues concerning freedom of expression in quasi-public places. A hearing was held in November 2002.

– Articles 10, 11 and 13 of the Convention

Judgment of 6 May 2003 – no violation.

(5) Allard v. Sweden, no. 35179/97

The case concerned a family dispute concerning property. Following disagreements between the applicant and relatives, the applicant had been ordered by a court to demolish a house erected on jointly owned property. Some months later, the Real Estate Court granted the applicant's request to have the property divided, assigning her the plot where the now demolished house was situated.

– Article 1 of Protocol No. 1

Judgment of 24 June 2003 – violation.

(6) Finucane v. the United Kingdom, no. 29178/95

The case concerned the notorious killing of a solicitor in Northern Ireland by loyalist assassins and the effectiveness of the investigation into his death.

– Article 2 of the Convention

Judgment of 1 July 2003 – violation.

(7) Poltoratskiy v. Ukraine, no. 38812/97

The case was one of six applications brought by applicants who had been sentenced to death and who were currently detained in prisons in Ukraine. The applicant was sentenced to death in 1995. The sentence was upheld in 1996 and he was transferred to an isolation block to await execution. However, a moratorium on capital punishment was declared in 1997 and all death sentences were commuted to life imprisonment by virtue of a law adopted in 2000. The case concerned the applicant's prison conditions.

A delegation from the European Commission of Human Rights visited the prison in November 1998 and found that the applicant was held in a single cell with an open toilet, a washbasin with cold water, two beds, a table and a bench, central heating and a window with bars. The light was on constantly and inmates were frequently observed by prison warders through a spy hole. Moreover, until May 1998 inmates had not been allowed to have daily outdoor walks and their cell windows had been completely shuttered.

– Articles 3, 8 and 9 of the Convention
Judgment of 29 April 2003 – violation.

(8) Glass v. the United Kingdom, no. 61827/00

The applicants are a severely physically handicapped child and his mother. Following admission of the first applicant to hospital suffering from serious respiratory problems, the doctors treated him with diamorphine in order to alleviate his distressed condition. A fight broke out between relatives and doctors around the child's bed concerning the administration of diamorphine against the wishes of the mother. The dose was reduced and the child survived. The Medical Council decided that the doctors had not acted improperly. The courts, stressing their *parens patriae* jurisdiction, confined themselves to pointing out that ideally there should be agreement between parents and doctors but where this was not possible the court's jurisdiction could be invoked. The applicants complained to the Court that the first applicant's life had been put at risk in that diamorphine had been administered to him without the second applicant's consent and that a "do not resuscitate" order had been placed in his notes without her consent or knowledge.

– Articles 2, 6, 8 and 13 of the Convention

Admissible (decision of 28 March 2003) under Article 8. Judgment will be delivered at a later date.

(9) Garaudy v. France, no. 65831/01

The applicant philosopher is a well-known author. He was convicted, in five separate proceedings heard at the same time, of five charges relating to the same book ("*Les mythes fondateurs de la politique israélienne*"). Three of the charges concerned the offence of "denial of crimes against humanity" (*contestation de crimes contre l'humanité*) and two of them, incitement to racial hatred and discrimination (*diffamation à raison de la race et provocation à la haine ou provocation à la violence à raison de la race*). The extracts concerned both negationist speech (denial of the holocaust) and hate speech. The applicant complained that he was deprived of the right to a fair trial because of the refusal of the appeal courts to join the cases and the manner in which the proceedings were conducted. He also complained of an interference with his freedom of speech.

– Articles 6 § 1, 10 and 17 of the Convention

Inadmissible (decision of 24 June 2003).

**(10) Edwards and Lewis v. the United Kingdom,⁵
nos. 39647/98 and 40461/98**

The cases concerned criminal proceedings in which the applicants were convicted of serious drug-related offences allegedly because of the involvement of undercover police officers. They complained of unfair proceedings due to entrapment, the non-disclosure of evidence and failure to identify or call as material witnesses the other participants in the offence. The prosecution in both cases had applied successfully to the court in an *ex parte* procedure for a non-disclosure order in respect of certain evidence to be put before the trial judge. The trial judge, and subsequently the appeal court, examined the claim of entrapment and rejected it, holding that there was nothing in the undisclosed material that supported the allegations and, in the case of Edwards, that there existed material that would be damaging to the defence if it were revealed. The Government considered that no issue of unfairness arose since there were sufficient safeguards, the trial and appeal judges having seen the evidence which in turn had not been used during the trial. The applicants maintained that the case was different from other cases since it was the judge – acting as a tribunal of fact – who decided on the plea of entrapment on the basis of evidence which had not been seen, or the subject of submissions, by the defence.

– Article 6 § 1 of the Convention
Judgment of 22 July 2003 – violation.

(11) Hansen v. Turkey, no. 36141/97

The applicant, an Icelandic national, had lived in Iceland with a Turkish citizen with whom she had two children born out of wedlock. The couple married but separated five years later and the applicant was granted custody of her two daughters by an Icelandic court. The father took the daughters to Turkey on holiday but failed to return to Iceland with them. Access rights were eventually granted by the Turkish courts in 1992 but the applicant complained that sufficient steps to enforce them in practice had not been taken.

– Articles 8 and 14 in conjunction with Article 8 of the Convention
Judgment of 23 September 2003 – violation of Article 8.

(12) Elci and others v. Turkey, nos. 23145/93 and 25091/94

The case concerned the arrest and alleged ill-treatment during police custody of 16 applicants who were lawyers practising in the Diyarbakir region. The applications had been declared admissible by the European Commission of Human Rights after a fact-finding mission. The applicants alleged that they were tortured and kept in inhuman conditions during their period of custody. They also alleged a violation of Article 5 in that there was no reasonable basis for the suspicion against them. There were no written records of their detention and it was unclear who had legal authority

⁵ The case is currently pending before the Grand Chamber.

to detain them. They further alleged a violation for the right to respect for family life concerning the searching of their legal offices and the taking of legal documents.

– Articles 3, 5 § 1 and 8 of the Convention, Article 1 of Protocol No. 1, and former Article 25 of the Convention

Judgment of 13 November – violation of Articles 3, 5 and 8.

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 six cases:

(1) Youatou v. the United Kingdom, no. 12010/03

The applicant, a Cameroon national, claimed he would be at risk if he were sent back to Cameroon, in view of the fact that he was listed as a witness in proceedings (for crimes against humanity) issued in Belgium against the President of Cameroon. The case is pending.

(2) El Beshty v. Sweden, no. 16578/03

The applicant entered Sweden with false credentials and alleges that he would be at risk of execution upon his return Libya. He was able to produce a document showing that he had been sentenced to death *in absentia*. The case is pending.

(3) Ndangoya v. Sweden, no. 17868/03

The applicant, a Tanzanian, was convicted in Sweden of aggravated assault (being aware of his own HIV infection, he knowingly contaminated three women). He has served two-thirds of a six-year prison sentence for that offence and has been released on probation but claims that his imminent expulsion from Sweden will prevent him from continuing his HIV treatment and that his health will rapidly deteriorate. He has submitted medical certificates to that effect. The case is pending.

(4) Olaechea Cahuas v. Spain, no. 24668/03

The applicant, a Peruvian national, resided in the United Kingdom for more than ten years. He is alleged to be a former member of “the Shining Path” (*sendero luminoso*), which has been waging an ‘armed struggle’ against the Peruvian government since 1980. The applicant had been granted exceptional leave to remain in the United Kingdom since the early 1990’s. The United Kingdom had previously refused his extradition to Peru on “terrorist” charges. On 3 July 2003, whilst on a business trip to Spain, the applicant was arrested under anti-terrorism legislation on the basis of an interpol warrant accusing him of terrorism. He at first agreed to his

extradition but subsequently changed his mind and challenged it unsuccessfully before the courts. On 6 August 2003, a request for interim measures was accorded by the Acting President of the Section with effect until the Court met on 26 August 2003. The applicant was nevertheless extradited to Peru on 7 August 2003.

– Articles 3 and 6 and 34 of the Convention
The case is pending.

(5) Liton v. Sweden, no. 28320/03

The applicant, a Bangladeshi national, claimed he would face a real risk of being arrested and tortured if forced to return from Sweden to Bangladesh. He has been refused asylum twice, allegedly suffers from “Post Traumatic Stress Disorder” and has suicidal tendencies. The case is pending.

(6) Muanga v. Finland, no. 32865/03

The applicant complained that he would be subjected to torture and to inhuman or degrading treatment on account of his political opinions, if returned to the Democratic Republic of Congo. It is claimed that he is in a poor state of health and will be unable to continue to undergo medical treatment if returned. A request for an interim measure was granted on 14 October 2003. The case is pending.

(b) Requests for priority pursuant to Rule 41 of the Rules of Court were granted in the following 12 cases :

57464/00	Mazurek v. Poland
53553/99	Sukhorukova v. Russia
74073/01	Domanska v. Poland
70206/01	Konieczka v. Poland
74153/01	Popov v. Moldova
2560/02	Dudek v. Poland
37431/02	Josan v. Moldova
40251/02	Hemmi v. Finland
49806/99	Prodan v. Moldova
13557/02	D.M. v. Poland
7453/02	Czyzewski v. Poland
8205/02	Mikulska v. Poland

VII. THIRD-PARTY INTERVENTION (ARTICLE 36 AND RULE 61)⁶

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

(1) Leschiutta v. Belgium and Italy, no. 58081/00

The case concerns child custody and in particular the non-enforcement by the Belgian Government of a decision of the Italian authorities.

– Article 8 of the Convention

The case has been communicated to the Belgian Government and the Italian Government was given leave to submit third party observations.

(2) E.O. v. Slovakia, no. 56193/00

V.P. v. Slovakia, no. 57581/00

The case concerns the length of civil proceedings relating to child custody (four years). The proceedings were brought by the child's grandmother and the child's father later joined them. The plaintiffs claimed that the mother had failed to take appropriate care of the child whose custody had been granted to her earlier and that the grandmother should be granted the right to educate the child. The national courts did not decide on the merits of the case - the proceedings were discontinued as the child had reached the age of majority. The child's grandmother and the child's father claim that the length of the proceedings violated Articles 8 and 6 of the Convention and that they had no effective remedy in respect of their complaint about the length of the proceedings. The applicants were requested to submit further detail concerning their relationship with the child in order to clarify the Article 8 issue. The President granted leave to the mother of the child, whose education was at stake in the case, to submit third party observations.

– Articles 6 § 1, 8, 13 and 18 of the Convention

(3) Altosaar v. Finland, no. 9764/03

The applicant was convicted in Finland for drug offences and was ordered to be transferred to Estonia to serve his sentence in accordance with the Council of Europe Convention on the transfer of prisoners. He claimed that he would serve a longer period in prison because of Estonia's harsher remission rules. The Estonian Government was invited to submit third party observations.

– Articles 3, 5 and 6 of the Convention

⁶ Third Party intervention is now regulated by Rule 44 of the Rules of Court (Nov 2003).

(4) Bäck v. Finland, no. 37598/97

The applicant complained of the impact on him of a debt adjustment scheme (see page 3 above). The Governments of the Netherlands, Norway, Sweden and the United Kingdom submitted third party observations.

– Article 1 of Protocol No. 1

(5) AB Kurt Kellermann v. Sweden, no. 41579/98

The applicant company complained that it did not have a fair hearing by an impartial tribunal (see page 4 above). The Government of Finland submitted third party observations.

– Articles 6 and 11 of the Convention

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 allocation to a decision body
 - (f) Applications pending by State

APPENDIX 1

Judgments delivered in 2003	
Merits	104
Striking out	4
Friendly settlement	47
Just satisfaction	0
Revision	0
Total	155
Chamber decisions adopted in 2003	
Applications declared admissible	288
Applications declared inadmissible	113
Applications struck out of the list	112
Total	513
Committee decisions adopted in 2003	
Applications declared inadmissible	3566
Applications struck out of the list	35
Total	3601
Applications communicated in 2003	
Total	351
Total applications finalised in 2003 (judgments*, inadmissibility and striking-out decisions)	
	3981

APPENDIX 2

	Chambers					Committees	
	Judgments	Admissible	Inadmissible	Struck out	Communicated	Inadmissible	Struck out
January	11	11	20	59	49	323	1
February	6	4	2	2	51	132	5
March	6	11	8	2	31	384	9
April	16	36	7	1	49	139	0
May	18	38	10	3	28	373	1
June	20	26	8	2	27	363	4
July	25	15	4	2	13	277	1
August	0	19	3	0	0	0	0
September	11	39	16	4	24	682	5
October	24	62	15	2	38	228	6
November	8	25	18	11	28	330	2
December	10	2	2	8	13	335	1
Total	155	288	113	112	351	3566	35

APPENDIX 3

Applications pending on 31 December 2003	
Total applications not yet examined	7197
Adjourned/Communicated for information	118
Communicated for observations	823
Admissible	287
Judgments not yet final (number of applications)	36
TOTAL APPLICATIONS PENDING	8461
(Chamber: 3295)	
(Committee: 5158)	

APPENDIX 4

Chart 1: Judgments delivered in 2003

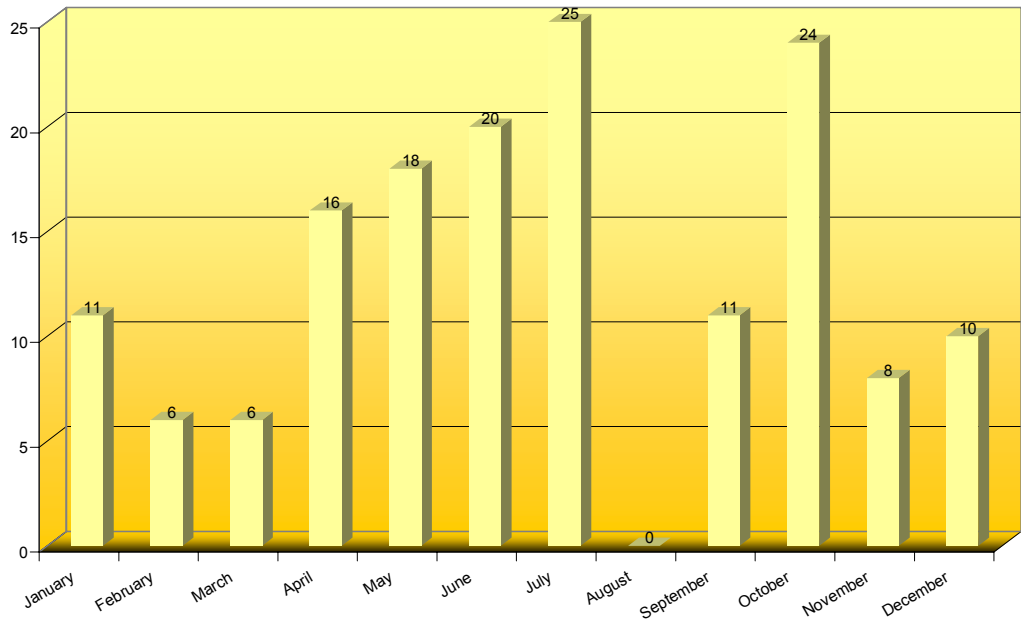


Chart 2: Inadmissibility and strike-out decisions adopted in 2003

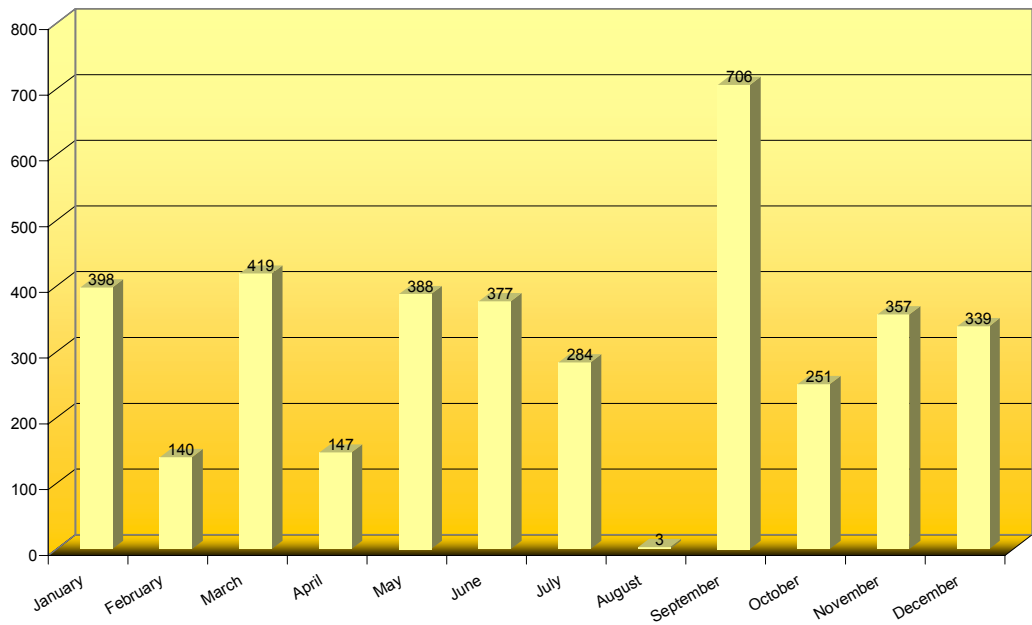


Chart 3: Admissibility decisions adopted in 2003

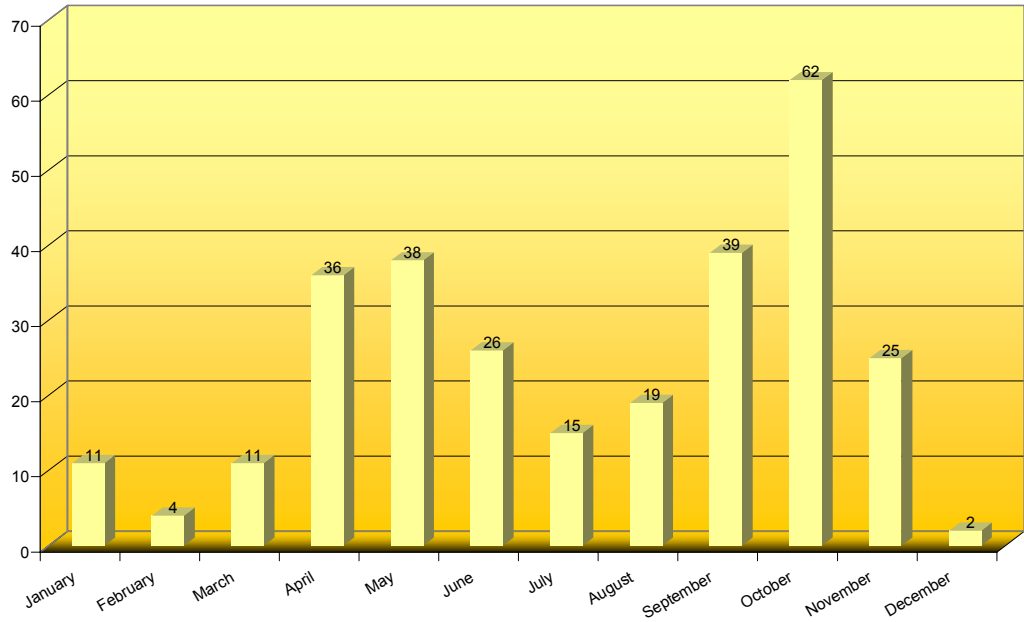


Chart 4: Applications communicated in 2003

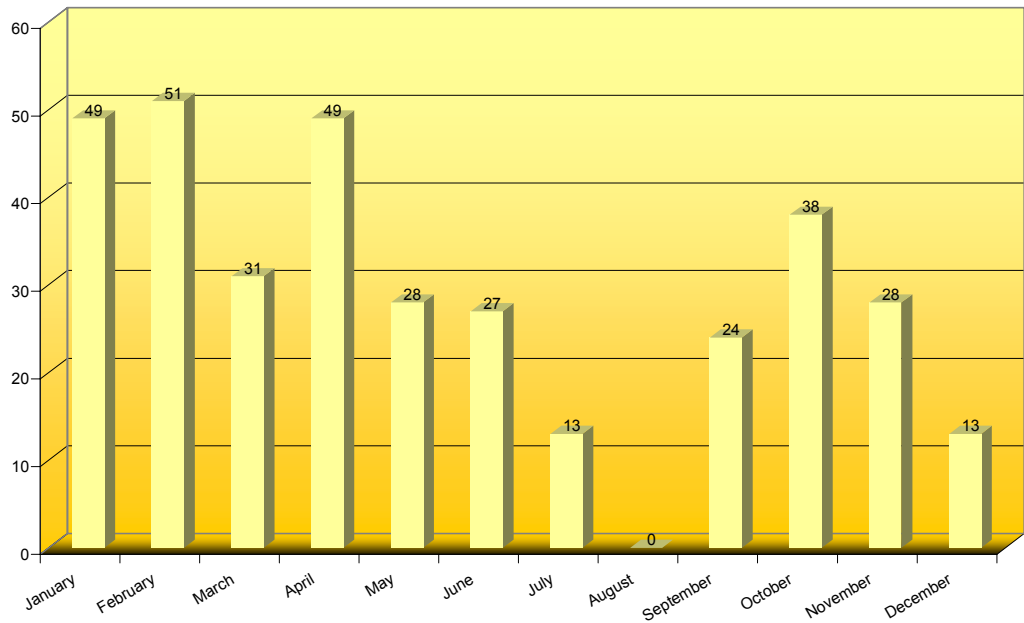


Chart 5: Applications pending on 31 December 2003 by year of lodging

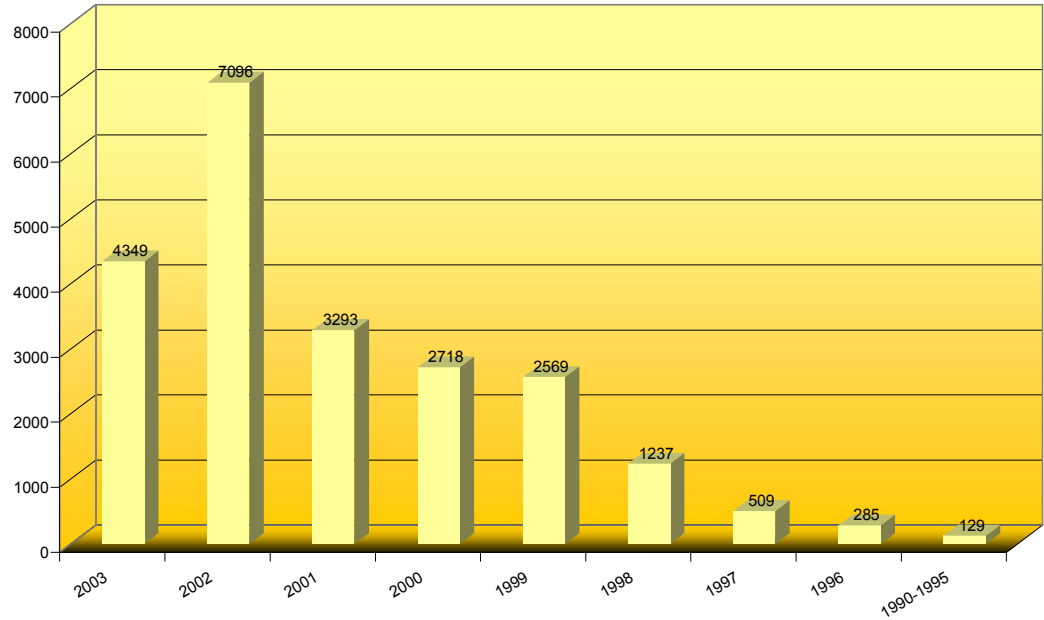


Chart 6: Applications pending on 31 December 2003 by State

