

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



FOURTH SECTION

ANNUAL ACTIVITY REPORT 2004

January 2005

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I. INTRODUCTION

In 2004, the Section held 35 Chamber sessions. Oral hearings were held in five cases and Delegates took evidence in one case¹. The Section delivered 167 judgments, of which 148 concerned the merits and 16 concerned friendly settlements. Two cases were struck out of the list by a judgment; one judgment concerned just satisfaction. Article 29 § 3 of the Convention (combined examination of admissibility and merits) was applied in 93 Chamber cases. 85 judgments were delivered under this procedure.

Of the cases examined by a Chamber

- (a) 189 applications were declared admissible ;
- (b) 111 applications were declared inadmissible ;
- (c) 35 applications were struck out of the list; and
- (d) 301 applications were communicated to the State concerned for observations of which 141 were communicated by the President.

In addition, the Section held 61 Committee sessions. 4301 applications were declared inadmissible and 57 applications were struck out of the list. The total number of applications rejected by a Committee represented 97 % of the inadmissibility and strike-out decisions taken by the Section during the year.

At the end of the year, 10,898 applications were pending before the Section.

¹ N. v. Finland, no. 38885/02. See p. 5 below.

II. COMPOSITION OF THE SECTION

From 1 January until 31 October 2004 the Section was composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish), *Vice-President*,
Viera **Strážnická** (Slovakian),
Josep **Casadevall** (Andorran),
Rait **Maruste** (Estonian),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Ljiljana **Mijović**² (Bosnia and Herzegovina)
Dean **Spielmann**³ (Luxemburger), *Judges*,

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

The Section was recomposed as from 1 November 2004 (Rule 25 of the Rules of Court). As from 1 November 2004 the Section was composed as follows:

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

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

² Ljiljana **Mijović** was elected in January 2004 and took up office in May 2004.

³ Dean **Spielmann** was elected in June 2004 and took up office in October 2004. He replaced Marc **Fischbach**, who resigned in January 2004.

III. HEARINGS

(a) Hearings were held in the following five cases:

(1) Ünal Tekeli v. Turkey, no. 29865/96

The applicant lawyer alleged that the refusal by the domestic courts to allow her to bear only her maiden name after she had married unjustifiably interfered with the right to protection of her private life. She also complained that she had been discriminated against in that married men could continue to bear their own family name after they married.

– Article 14 taken with Article 8 of the Convention

Admissible (decision of 1 July 2003). A hearing on the merits was held on 13 January 2004.

Judgment of 16 November 2004 – violation Article 14 in conjunction with Article 8.

(2) Hutten-Czapska v. Poland, no. 35014/97

The applicant apartment owner complained that the implementation of tenancy protection legislation amounted to a continuing violation of her property rights. She submitted that the fixed rents were inadequate, and that she had neither been able to regain possession and use of her property nor to derive any income from it.

– Article 1 of Protocol No. 1

Admissible (decision of 16 September 2003). A hearing on the merits was held on 27 January 2004. Judgment will be delivered at a later date.

(3) (Joint hearing) Selistö v. Finland, no. 56767/00

The applicant, a journalist, was the subject of criminal proceedings for defamation for writing articles concerning a surgeon who allegedly had operated while in an intoxicated state, leading to the death of a patient. It had later been decided by the Public Prosecutor not to prosecute the surgeon. According to various witnesses the surgeon had an alcohol problem. The applicant claimed that the articles had no defamatory purpose, that they concerned a matter of serious public interest and that the material contained in the articles was based on a public document, namely the Public Prosecutor's report leading to a decision not to press charges against the surgeon.

Karhuvaara and Italehti v. Finland, no. 53678/00

The case concerned the criminal responsibility of a publishing company following the publication of an article about a Member of Parliament whose husband had been convicted for drunken and disorderly behaviour. His wife claimed that the newspaper articles referring to the fact of her relationship with the accused infringed her right to respect for private life. The applicant company was fined 24 000 euros following criminal proceedings.

– Article 10 of the Convention

Admissible (decisions of 10 February 2004). A joint hearing on the merits was held on 10 February 2004.

Judgments of 16 November 2004 – violation.

(4) J.A. Pye (Oxford) Ltd & J.A. Pye (Oxford) Land Ltd v. the United Kingdom, no. 44302/02

Fields belonging to the applicants had been occupied by farmers for more than twelve years without paying rent. Due to the application of the principle of adverse possession the applicant companies eventually lost title to the property.

– Article 1 of Protocol No. 1

A hearing on the admissibility and merits was held on 8 May 2004. Admissible (decision of 8 May 2004).

Judgment will be delivered at a later date.

(5) Steel and Morris v. the United Kingdom, no. 68416/01

The applicants produced a fact-sheet entitled “What’s wrong with McDonald’s” as part of a campaign against the McDonald’s fast-food restaurant chain. Defamation proceedings followed the publication of statements made in the leaflet. The hearing that took place in the case was the longest in legal history. The applicants, who were both unemployed, complained that they did not receive legal aid during the proceedings and claimed, in view of the length and complexity of the proceedings, to have been deprived of a fair hearing. They further complained of a violation of their right to freedom of expression.

– Articles 6 § 1 and 10 of the Convention

Admissible (decision of 6 April 2004). A hearing on the merits was held on 7 September 2004. Judgment will be delivered at a later date.

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

N. v. Finland, no. 38885/02

The case concerned the decision to deport the applicant to the Democratic Republic of Congo after his request for asylum was rejected. The applicant alleged that he was at risk of being persecuted on the basis of his military background. He claimed to have been part of a special division that protected the former President Mobutu, who had been removed from power in 1997.

– Article 3 of the Convention

Admissible (decision of 23 September 2003). A fact-finding mission took place in March 2004. The Court's delegation was composed of Judges Garlicki and Fura-Sandström, assisted by the Registrar, Mr O'Boyle, and two other members of the registry.

IV. CASES RELINQUISHED TO THE GRAND CHAMBER

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

- (1) **Hepple and others v. the United Kingdom, no. 65731/01**
- (2) **Kimber v. the United Kingdom, no. 65900/01**

The cases concern differences between men and women as regards their entitlement to certain industrial injuries benefits.

– Article 1 of Protocol No. 1 combined with Article 14 of the Convention

V. OTHER CASES OF INTEREST

Of the judgments delivered and decisions adopted by the Section in 2004, other cases of interest include the following:

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

Administration of drugs to severely handicapped child despite mother's opposition. There was serious disagreement between the hospital doctors and the mother of the child as to how he should be treated. A "Do Not Resuscitate" notice was added to the child's file without consulting his mother. A row with medical staff broke out around the child's bed during one particular crisis. The child survived the crisis and was able to be discharged.

– Article 8 of the Convention

Judgment of 9 March 2004 – violation of Article 8.

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

The case concerns the removal by legislation (the Representation of the People Act 1983) of the applicant's voting rights in parliamentary or local elections on account of his status as a prisoner. He is currently serving a life sentence.

– Article 3 of Protocol No. 1

Judgment of 30 March 2004 – violation. The request of the Government to refer the case to the Grand Chamber was accepted by the Panel.

(3) **Gorraiz Lizarraga and others v. Spain, no. 62543/00**

Alleged legislative intervention in pending court proceedings. It was not possible for the applicants' association to take part in proceedings before the Constitutional Court concerning an advisory opinion relating to the construction of a dam affecting the properties of the applicants. Fair trial and right to equality of arms.

– Articles 6 § 1 of the Convention

Judgment of 27 April 2004 – no violation.

(4) Prodan v. Moldova, no. 49806/99

Delay by the authorities in executing final judgments ordering restitution of property. Following the restitution of nationalised housing, the applicant complained about the non-enforcement of two final judgments ordering the eviction of tenants from his property.

– Article 6 § 1 of the Convention and Article 1 of Protocol No. 1
Judgment of 18 May 2004 – violation.

(5) Hilda Hafsteinsdóttir v. Iceland, no. 40905/98

Detention in police custody for drunkenness and disorderly conduct.

– Article 5 § 1 of the Convention as regards the quality of the law
Judgment of 8 June 2004 – violation.

(6) S.C. v. the United Kingdom, no. 60958/00

The applicant, aged 11, was charged with attempted robbery and stood trial in the Crown Court where he was convicted and sentenced to two and a half years' detention. All appeals were refused. The applicant complained that he was denied a fair trial because of his low age and limited IQ and submitted that he was unable to participate effectively in his trial. Fair trial.

– Article 6 § 1 of the Convention
Judgment of 15 June 2004 – violation.

(7) Leyla Şahin v. Turkey, no. 44774/98

The applicant complained under Article 9 of the Convention that she had been prohibited from wearing the Islamic headscarf at university. During her fifth year as a medical student in Istanbul University she had been refused admission to classes because of her refusal to comply with a circular prohibiting the wearing of the headscarf. She also complained of an unjustified interference with her right to education, within the meaning of Article 2 of Protocol No. 1 to the Convention. Miss Şahin further complained of a violation of Article 14, taken together with Article 9, arguing that the prohibition on wearing the Islamic headscarf obliged students to choose between education and religion and discriminated between believers and non-believers.

– Article 9 of the Convention

Judgment of 29 June 2004 – no violation. The request of the applicant to refer the case to the Grand Chamber was accepted by the Panel.

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

The applicant, an autistic man with a history of self-harm, was admitted to hospital as an informal patient after an incident took place when he posed a danger to himself and to others. He alleged that his treatment as an informal patient in a psychiatric institution amounted to unlawful detention, and that he had no effective remedy to review the legality of his detention.

– Article 5 §§ 1 and 4 of the Convention
Judgment of 5 October 2004 – violation.

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

Alleged ill-treatment by the police and effectiveness of the investigation. The applicants complained under Article 3 that they had been subjected to physical and mental torture and to inhuman and degrading treatment on their arrest and during custody in Catalonia and at the *Guardia Civil* headquarters in Madrid. They further alleged that the investigations by the domestic authorities were not effective or thorough and had not enabled the facts to be established.

– Article 3 of the Convention
Admissible (decision of 18 November 2003).

Judgment of 2 November 2004 – violation on account of the failure to hold an effective official investigation into the allegations.

(10) Musumeci v. Italy, no. 33695/96

The applicant, sentenced to life imprisonment for manslaughter, complained of the lack of possibility of challenging before a court the decision to subject him to a high security regime (EIV) and the lack of access to court to challenge the application of a stricter control of correspondence.

– Article 6 § 1 and Article 8 of the Convention

Admissible (decision of 17 December 2002). Judgment to be delivered on 11 January 2005.

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

The case concerns court decisions that the first applicant, an adopted child, could not inherit the estate of his adoptive father's mother, who in 1939 had drawn up a will leaving her property to her son. One of the clauses stipulated that her son was to pass on his inheritance to a child or grandchild "from a legitimate and canonical marriage". In the event of failure to satisfy those conditions, the will had provided that the estate was to pass to the children and grandchildren of the testator's daughters. In 1995 the adoptive father of the first applicant bequeathed the property he had inherited to the first applicant. On 18 May 2000 the High Court of Justice of Andorra found that the first applicant could not be considered "a child of a lawful and canonical marriage" and could not, therefore, inherit the estate. The court ordered the first applicant and his mother, the second applicant, to hand over

the property to the testator's great-granddaughters, deemed to be her rightful heirs.

– Article 14 in conjunction with Article 8
Judgment of 13 July 2004 – violation.

(12) Moreno Gomez v. Spain, no. 4143/02

The applicant lived in a residential area in Valencia. She had complained of the noise made by discotheques and nightclubs which did not close on time. An official report had found the noise levels to be unacceptable. She complained that the Council had repeatedly tolerated the flouting of the rules which it had itself established and that there was a failure to take action to deal with the nighttime disturbances.

– Article 8
Judgment of 16 November 2004 –violation.

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) Dejbakhsh and Mahmoud Zadeh v. Sweden, no. 11682/04

Expulsion to Iran of two Iranian asylum seekers claiming they will be subject to ill-treatment if deported due to alleged adultery. Rule 39 was applied in this case on 7 July 2004 and prolonged until further notice.

The case is pending.

(2) Ovdienko Iryna and Ivan v. Finland, no. 1383/04

The applicant and her son have requested Rule 39 twice with respect to their proposed expulsion to Ukraine. The second applicant suffers from mental health problems which necessitate long-term therapy.

– Article 3.

The case is pending.

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

The applicants complain that, if expelled from Sweden to Syria, the first applicant would face a real risk of being arrested and executed as the death sentence against him in Syria has acquired legal force. Rule 39 granted on 16 April and prolonged until further notice.

– Articles 2 and 3 of the Convention

Admissible (decision of 26 October 2004).

(4) Shloun v. Sweden, no 17185/04

The application concerns a stateless Palestinian, who was involved in the ‘resistance’ against the Israeli occupation. He was granted temporary residence, the renewal of which was rejected on the recommendation of the security police on the grounds that they considered him a security risk. The applicant maintains he will certainly be subjected to torture by the Israeli secret service if he is deported. Rule 39 granted on 18 May 2004 but not prolonged.

– Articles 3, 8 and 13 of the Convention

No decision taken until the final domestic decision has been reached.

(b) Requests for priority pursuant to Rule 41 of the Rules of Court were granted in 8 cases, including :

(1) Ratajczyk v. Poland, no. 11215/02

Length of civil proceedings. New domestic remedies in respect of allegations of unreasonable length of proceedings (the so-called “Kudla law”).

– Article 3 of the Convention

The case is pending with several similar cases.

(2) Ostovar v. Moldova, no. 35207/03

Conditions of detention and alleged interference with correspondence.

– Articles 3, 8 and 13 of the Convention

The case is pending.

(3) Carabasse v. France, no. 59765/00

The Court of Cassation removed the applicant’s civil case from the list pursuant to Art 1009 of the Code of Civil Procedure on the grounds that he had not complied with the lower court’s judgment. Access to court.

– Article 6 § 1 of the Convention

Judgment of 11 January 2005 – violation.

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

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

Sallinen and others v. Finland, no. 50882/99

The applicant’s law office was searched and privileged material was seized and copied. Respect for private and family life. Lack of safeguards and issues concerning the quality of the law. No effective remedy against the interference. Request on behalf of the Finnish Bar Association for leave to intervene as a third party in the proceedings was granted in April 2004.

– Articles 8 and 13 of the Convention

Judgment will be delivered at a later date.

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

APPENDIX 1

Judgments delivered in 2004	
Merits	148
Striking out	2
Friendly settlement	16
Just satisfaction	1
Revision	0
Total	167

Chamber decisions adopted in 2004	
Applications declared admissible	189
Applications declared inadmissible	111
Applications struck out of the list	35
Total	335

Committee decisions adopted in 2004	
Applications declared inadmissible	4301
Applications struck out of the list	57
Total	4358

Applications communicated in 2004	
Total	302

Total cases finalised in 2004 (judgments*, inadmissibility and strike-out decisions)	4670
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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	7	14	9	3	5	351	7
February	7	11	8	6	14	231	3
March	12	10	12	3	32	307	1
April	15	9	2	4	6	171	2
May	7	38	20	5	53	212	4
June	24	26	10	1	29	299	7
July	28	7	2	1	13	174	5
August	0	15	8	3	10	313	2
September	20	21	11	6	46	890	10
October	19	17	13	2	45	587	7
November	23	15	9	1	34	471	8
December	5	6	7	0	14	295	1
Total	167	189	111	35	301	4301	57

APPENDIX 3

Applications pending on 31 December 2004	
Total applications not yet examined	10898
Adjourned/Communicated for information	291
Communicated for observations	978
Admissible	290
Judgments not yet final	67
TOTAL APPLICATIONS PENDING	12524
(Chamber: 5296)	
(Committee: 7228)	

APPENDIX 4

Chart 1: Judgments delivered in 2004

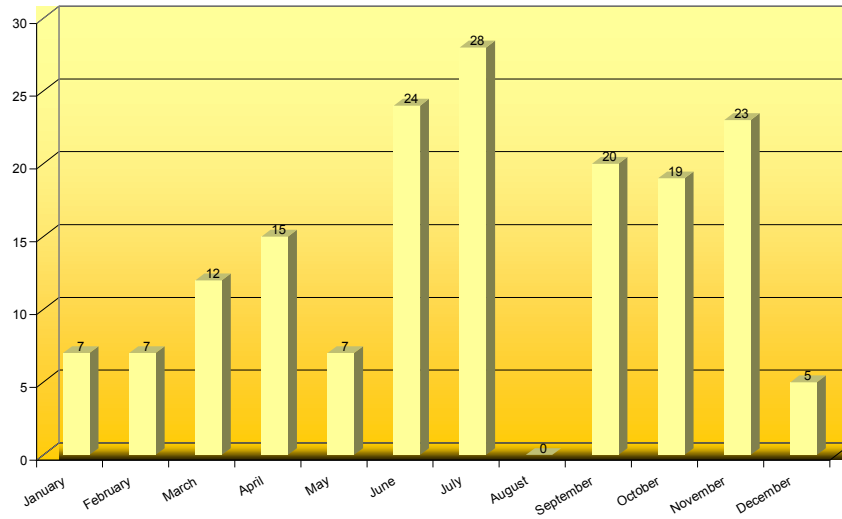


Chart 2: Inadmissibility and strike-out decisions adopted in 2004

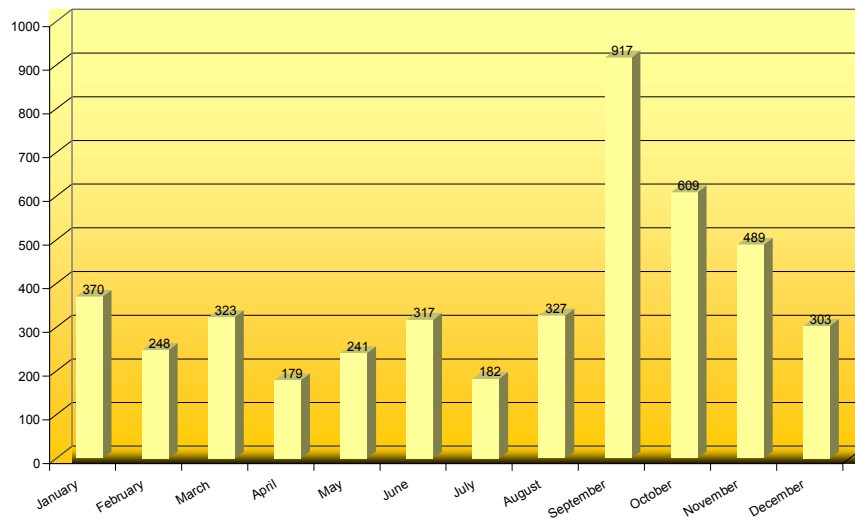


Chart 3: Admissibility decisions adopted in 2004

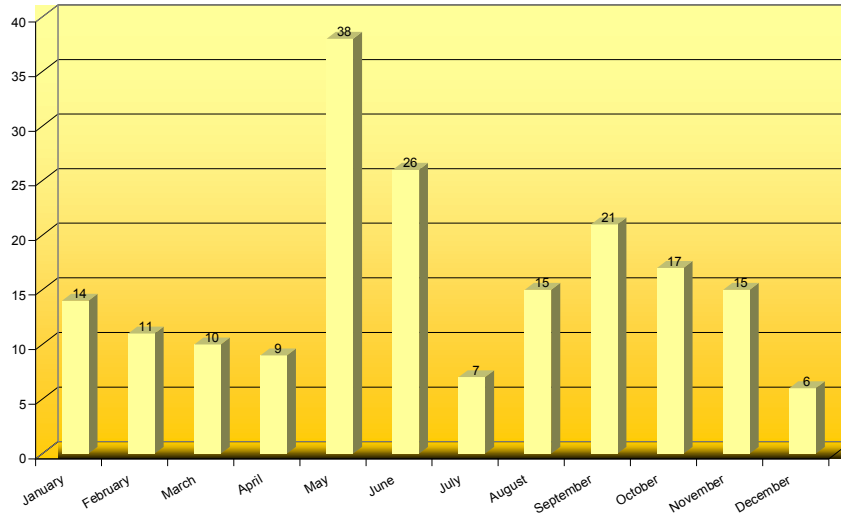


Chart 4: Applications communicated in 2004

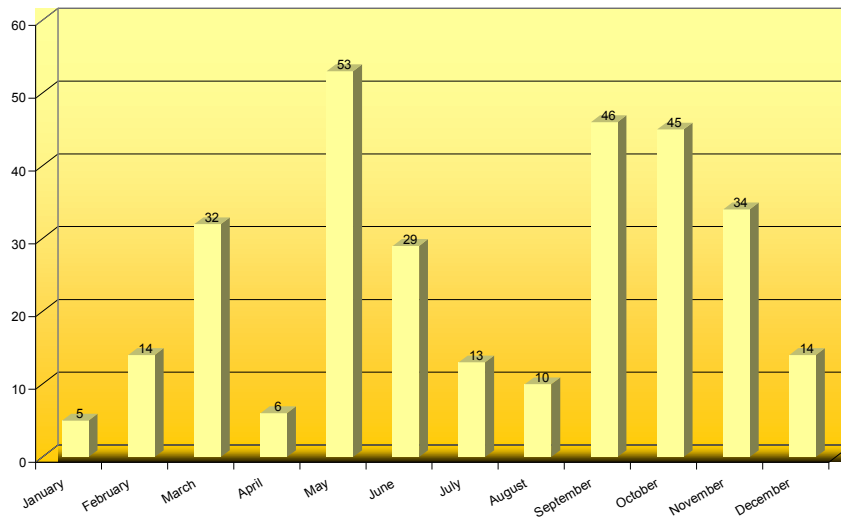


Chart 5: Applications pending on 31 December 2004 by year of lodging

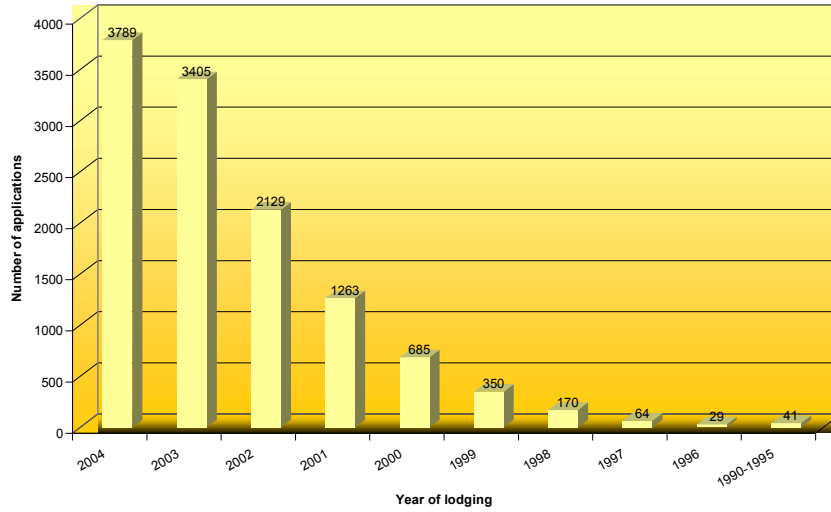


Chart 6: Applications pending on 31 December 2004 by State

