

INSTITUTION / ORGANISATION		REPRESENTED BY	
NAME	Austrian Ministry of Justice	FIRST NAME/ SURNAME	Georg Stawa
ADDRESS	Museumstrasse 7, 1070 Vienna, Austria	POST HELD	Judge, assigned to the Ministry of Justice, Dep. Pr 1

SCHEME SUBMITTED	
TITLE	<b>THE REFORM OF LAW ENFORCEMENT (“FEX-project”)</b>
DATE OF INTRODUCTION	01.01.2004, adapted 2005

#### DESCRIPTION OF THE SCHEME

The Austrian Ministry of Justice focused on a project to improve the effectiveness and (re-) organization of the enforcement of civil decisions.

The “FEX” project (“Fahrnisexekution” in german): a reform and reorganization was started in two steps (2004 and 2005) to make the whole branch of civil enforcement fit for the future and to fulfil the needs of the court’s clients.

#### Goals:

- . establishment of “Planning- and Controlling-units” at each Court of Appeal;
- . simplification of the system of enforcement fees to reduce bureaucracy as part of a clear legal framework introducing a system of flat rated fees;
- . achieve a steering-effect to avoid uneconomic enforcement-practices through reasonable and foreseeable enforcement fees;
- . adequate payment of the enforcement agents (bailiffs) depending on workload;
- . introduce quality criteria to increase the quality of enforcement;
- . decouple of the enforcement as a financial service from the judiciary in the narrower sense;
- . concentration of executing and managing the enforcement-personnel at the Courts of Appeal;
- . special support and training of the enforcement agents’ (bailiffs’)’ qualifications and professionalism;
- . controlling of key-data and personnel management.

#### EFFECTS ON THE WORKINGS OF THE COURT

Enforcement as a public financial service became strictly decoupled from the judiciary in the narrower sense. The management of all enforcement activities is now done for the whole area of a Court of Appeal in a most effective way.

Optimal use of staff enabled cut of manpower in the branch of enforcement of a quarter, as well as the reduction of costs for the clients, because of limited time and distances invested.

Simplification of the enforcement fees to reduce bureaucracy as part of a clear legal framework.

Uneconomic enforcement-practises by the clients could be reduced due to the clear and foreseeable costs.

Adequate payment of the enforcement agents (bailiffs) depending on workload had an immediate effect on economically behaviour of the enforcement agents.

Support to the enforcement agents within a short time.

Centralized dealing with the matters of cooperation and communication to key-customers improved the cooperation between the parties.

Introducing quality criteria raised the quality of enforcement

Special support and training of the enforcement agents’ (bailiffs’) is now provided to their accurate needs.

Data from the judicial data base network are drawn into a standardized database allows monthly automated calculation of key-data and benchmarks (duration of procedures, amount of fees, costs, etc.) through standardized office software for budgetary and personnel controlling purposes.

#### FUTURE ADDITIONS TO IMPROVE THE RESULTS

- Mobile Computing for the enforcement agents will be established to enable data in-/output at the location of enforcement.
- The system of data-controlling, benchmarks and standardized analysis will be further improved.
- To sell assets promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation , online auctions will be enabled on well-known and established internet-platforms.

#### PUBLIC AUTHORITY SUPPORT

YES

It was introduced by the Ministry of Justice and is strongly supported by the Presidents of the Courts of Appeal as well as by the bailiffs and the court's clients.

**POSSIBLE APPLICATION IN EUROPEAN COURTS**

YES

Because it is proper model of “privatization” and outsourcing of judicial activities within the public sector using the mechanism of economic business and management to raise efficiency and effectiveness of procedures and manpower.

**"THE CRYSTAL SCALES OF JUSTICE"**  
**THE EUROPEAN PRIZE FOR GOOD PRACTICE**  
**IN Civil JUSTICE ORGANISATION AND PROCEDURE**

**Entry form**

1. Details of entrant (institution/organisation)

Name: Austrian Ministry of Justice  
Address: Museumstrasse 7, 1070 Vienna, Austria

2. Represented by

First name/Surname: Georg Stawa  
Post held: Judge, assigned to the Ministry of Justice, Dep. Pr 1

3. Scheme submitted

Title: The Reform of Law Enforcement ("FEX-project")  
Date of introduction: 1.1.2004, adapted 2005

4. Items to be attached  
Please attach in English or French:

- A description of the scheme
- A description of the effects of the scheme on the workings of the
- Any possible future additions which might improve the results of the scheme
- Austrian article (Appendix I)
- FEX – Controlling (Example) (Appendix II)

5. Does the scheme have the support of the responsible public authorities in your country? If so, please give details.  
Yes, it was introduced by the Ministry of Justice and is strongly supported by the Presidents of the Courts of Appeal as well as by the bailiffs and the court's clients.

6. Do you believe the scheme to be usable in other courts in European states? Give your reasons.  
Yes, because it is proper model of "privatisation" and outsourcing of judicial activities within the public sector using the mechanism of economic business and management to raise efficiency and effectiveness of procedures and manpower!

## Description of the Scheme

### **Intro**

Considering that the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time, in accordance with Article 6 of the European Convention on Human Rights and acknowledging also that the rule of law principle can only be a reality if citizens can, in practice, assert their legal rights and challenge unlawful acts<sup>8</sup>, a proper and efficient system of justice is not imaginable without effective enforcement of acts that are legally recognized as enforceable<sup>9</sup>. Despite of the correctness of the court practise, the duration of the procedures and their quick and accurate enforcement is most important for the economy. Therefore the Austrian Ministry of Justice focused on a project to improve the effectiveness and (re-) organisation of the enforcement of civil decisions:

### **Starting point**

Typical for the origin structure and organisation of the Austrian law-enforcement was the special status of the enforcement agents (bailiffs), her/his untypical working-hours, special kind of payment connected with an complex, difficult and uneconomic system of enforcement fees and different types of working-contact-points (clerks, lawyers, judges, liable parties...). 1/7 of all employees (or 900 full-time-equivalents) at the courts were engaged in the branch of law-enforcement.

There was no overall controlling, but a very much inefficiently and uneconomically practise with a high degree of bureaucratic workload done within the court by the enforcement-agent.

### **The Project**

Under the title of „FEX“ (the German term for enforcement on movabilities is „**F**ahrnis**e**xekution“) a reform and reorganisation was started in two steps (2004 and 2005) to make the whole branch of civil enforcement fit for the future and to fulfil the needs of the court's clients.

### **Goals**

Therefore – based on an in-depths analyse by a private consultant - the main goals and measures have been:

- Establishing of „Planning- and Controlling-units“ at each Court of Appeal („FEX Planungs- und Leitungseinheiten“)
- Simplification of the system of enforcement fees to reduce bureaucracy as part of a clear legal framework introducing a system of flat rated fees
- To achieve a steering-effect to avoid uneconomic enforcement-practises through reasonable and foreseeable enforcement fees
- Adequate payment of the enforcement agents (bailiffs) depending on workload
- Introducing quality criteria rising the quality of enforcement
- Decouple of the enforcement as a financial service from the judiciary in the narrower sense
- Concentration of executing and managing the enforcement-personnel at the Courts of Appeal
- Special support and training of the enforcement agents' (bailiffs') qualifications and professionalism
- Controlling of key-data and personnel management

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<sup>8</sup> Recommendation Rec(2003)17 of the Committee of Ministers to member states of the Council of Europe on enforcement

<sup>9</sup> A. Uzelac: "Establishing Common European Standards of Enforcement: Recent Work of the Council of Europe as regards Enforcement Procedures and Bailiffs", Paris 2002

### **The Effects of the reform of law enforcement in Austria (“FEX-project”)**

- Establishing the „Planning- and Controlling-units” at each Court of Appeal („FEX Planungs- und Leitungseinheiten“) under the authority of the President of the Court of Appeal, the enforcement as a public financial service became strictly decoupled from the judiciary in the narrower sense.
- Whereas the enforcement-application is still proved by the courts, the management of all enforcement activities is now done for the whole area of a Court of Appeal in a most effective way by these „Planning- and Controlling-units”.
- Providing the personnel management of all enforcement agents (including specialists for special tasks) the „Planning- and Controlling-units” are responsible for quality control, planning and economic/budgetary controlling guided by key-data and benchmarks.
- Optimal use of staff enabled cut of manpower in the branch of enforcement of a quarter (!) as well as the reduce of costs for the clients, because of limited time and distances invested.
- Simplification of the enforcement fees to reduce bureaucracy as part of a clear legal framework. The enforcement-fees are not any more to be calculated in a complicated procedure ex post but as a flat rated foreseeable fee to be paid with the claim for enforcement independent from the amount of the claim.
- Therefore uneconomic enforcement-practises by the clients could be reduced due to the clear and foreseeable costs.
- Adequate payment of the enforcement agents (bailiffs) depending on workload also had an immediate effect on economically behaviour of the enforcement agents.
- In special cases, the members of the „Planning- and Controlling-units” provide support to the enforcement agents within a short time (special know-how, medical/psychological assistance, public relations, managing the press...)
- Centralized dealing with the matters of cooperation and communication to key-customers (social insurance companies, big law-firms) improved the cooperation between the parties.
- Introducing quality criteria raised the quality of enforcement
- The „Planning- and Controlling-units” are especially (partially) responsible for selecting the enforcement agents, to provide supervision to the enforcement agents, to deal their periodical aims and to promote Corporate Identity.
- Special support and training of the enforcement agents’ (bailiffs’) is now provided to their accurate needs.
- Data from the judicial data base network are drawn into a standardized database allows monthly automated calculation of key-data and benchmarks (duration of procedures, amount of fees, costs, etc.) through standardized office software for budgetary and personnel controlling purposes.
- See also “4b2\_FEX\_Controlling\_example.ppt” for a vivid example of the set up controlling-system

## **The possible future additions of the reform of law enforcement in Austria**

### **(“FEX-project”)**

- Mobile Computing for the enforcement agents will be established to enable data in-/output at the location of enforcement
- The system of data-controlling, benchmarks and standardized analyses will be further improved
- To sell assets promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation<sup>10</sup>, online auctions will be enabled on well-known and established internet-platforms.

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<sup>10</sup> Following III. 7. of the recommendation Rec(2003)17 of the Committee of Ministers to member states of the Council of Europe on enforcement

## Appendix

**Titel:**

Neuordnung der Vollzugsgebühren ab 2004

**Veröffentlichungsjahr:**

2003

**Autor:**

Prof. Dr. Kurt Dellisch

**Verlag:**

manz

**Rubrik:**

Neue Gesetze

**Fundstelle:**

AnwBl 2003, 580;

**Langtext:**

Gekoppelt mit der Exekutionsordnungs-Novelle 2003 wurde mit BGBl I 2003/31 durch das Vollzugsgebührengesetz eine wesentliche Neuordnung bei der Entrichtung der Vollzugsgebühren für die Zeit ab 1. 1. 2004 eingeführt.

Die Vollzugsgebühren sind nicht mehr wie bisher in einem nachträglichen komplizierten Einhebungsverfahren zwischen Gerichtsvollziehern und betreibenden Gläubigern zu verrechnen, sondern gleichzeitig mit der Eingabengebühr bei Stellung des Exekutionsantrages als pauschale Gerichtsgebühr zu entrichten.

Unter anderem beträgt die somit pauschal beizubringende Vollzugsgebühr bei der Fahrnisexekution Euro 6,-, bei der Räumungsexekution Euro 30,- und bei Anträgen auf Zwangsverwaltung oder Zwangsversteigerung von Liegenschaften je Euro 20,- und zwar unabhängig von der Höhe der jeweiligen vollstreckbaren Forderung. Dagegen sind pauschale Vollzugsgebühren mangels voraussichtlicher Tätigkeit von Gerichtsvollziehern in solchen Verfahren für Exekutionsanträge auf Lohnpfändung (allein), Forderungsexekution oder zwangsweise Pfandrechtsbegründung nicht zu entrichten.

Die für Exekutionsverfahren, in denen zumindest auch Fahrnisexekution beantragt wird, nach Anmerkung 1a zu TP 4 GGG zu entrichtende zusätzliche Gerichtsgebühr von Euro 6,- ohne Rücksicht auf die Höhe der vollstreckbaren Forderungen bleibt aufrecht.

Die beizubringenden Gebühren auf einem Fahrnisexekutionsantrag betragen daher bei einer Hauptforderung von beispielshalber Euro 500,- Euro 46,-, bei einem Antrag auf Lohnpfändung allein Euro 34,-.

Diese Umstellung wird für den Betrieb der Rechtsanwaltskanzlei sicher durch neue ADV-Programme und die Herausgabe eines neuen Normalkostentarifes erleichtert werden.

Es ist zu begrüßen, dass die Gerichtsvollzieher weiterhin als Organe der Rechtspflege tätig sind und nicht (woran auch gedacht worden war) in eine private Inkasso-GmbH ausgegliedert wurden.

Das bisherige nunmehr abgelöste System der Vollzugsgebührenverrechnung wies sowohl im Bereiche der Rechtspflege als auch im Bereiche der Rechtsanwaltskanzleien erhebliche Missstände, insbesondere durch einen die Höhe der jeweiligen Vollzugsgebühren betriebswirtschaftlich übersteigenden Verwaltungsaufwand auf, der durch die Neuregelung im Verkehr zwischen den Verfahrensparteien und dem Exekutionsgericht nunmehr wegfällt:

Bei Vorschreibung gegenüber den betreibenden Gläubigern entstand eine erhebliche Zeitverzögerung, sodass es vorgekommen ist, dass der Verpflichtete, aufgeschreckt durch den Besuch des

Gerichtsvollziehers, beim betreibenden Gläubiger Zahlung leistete, dem aber die offenen Vollzugsgebühren nicht bekannt waren und der daher eine Einstellungsbewilligung erteilte. Entweder mussten dann die betreibenden Gläubiger auf die nachträglich vorgeschriebenen Vollzugsgebühren verzichten oder einen Antrag auf Bestimmung derselben als Exekutionskosten stellen, wobei dann zur Hereinbringung dieser Vollzugsgebühren wegen der vorangegangenen Einstellung des Verfahrens nach § 39 Zahl 6 EO ein neuer Exekutionsantrag mit neuen, die Verpflichteten erheblich mehr belastenden Kosten gestellt werden musste.

Die neue Regelung ist aber für den Betrieb der Rechtsanwaltskanzleien deshalb von Vorteil, weil die trotz der geringen Höhe der Vollzugsgebühren auflaufende Verwaltungsarbeit, nämlich die Bearbeitung der Vorschreibungen der Vollzugsgebühren in den Akten der Rechtsanwaltskanzlei einschließlich sowohl der Durchführung als auch der Verbuchung der Überweisungen wegfällt, eben auch die oft nicht zeitgerecht mögliche Verbuchung in der ADV-Buchhaltung für jeden einzelnen Akt.

Es wird zwar viel hinsichtlich einer Verwaltungsvereinfachung auch zu Gunsten der Verfahrensparteien gesprochen und versprochen, die Neuordnung der Vollzugsgebühren ist aber jedenfalls eine vorbildliche Verwaltungsvereinfachung sowohl für die Gerichte als auch für die Verfahrensparteien.

### ***Translation and synthesis of the Article***

Referring to the newly introduced type of flat-rated enforcement fees Prof. Dellisch states in his article published in the Austrian "Anwaltsblatt" ("Lawyer's News", AnwBl 2003, 580; Manz; Vienna):

...  
"The enforcement-fees are not any more to be calculated in a complicated procedure ex post but as a flat rated fee to be paid with the claim for enforcement independent from the amount of the claim.

...  
Instead of the old system with its uneconomic expenditures and administration

...  
the new law (referring to the reorganisation of enforcement and flat-rated court-fees) is of enormous advantage for the law-firms because of its elimination of expenditure of administration within the law-office, namely handling the court fees in every single file of the law-office including booking, prescription and transferring the fees to/from the court/the client.

It is mostly common to speak about deregulation and simplification to the client's purpose, but the new system of court-fees in the field of enforcement sets a good example of simplification of procedures and improvement of efficiency for either the courts and the parties."



## **FEX-Controlling (Example)**

January 2004 – January 2005

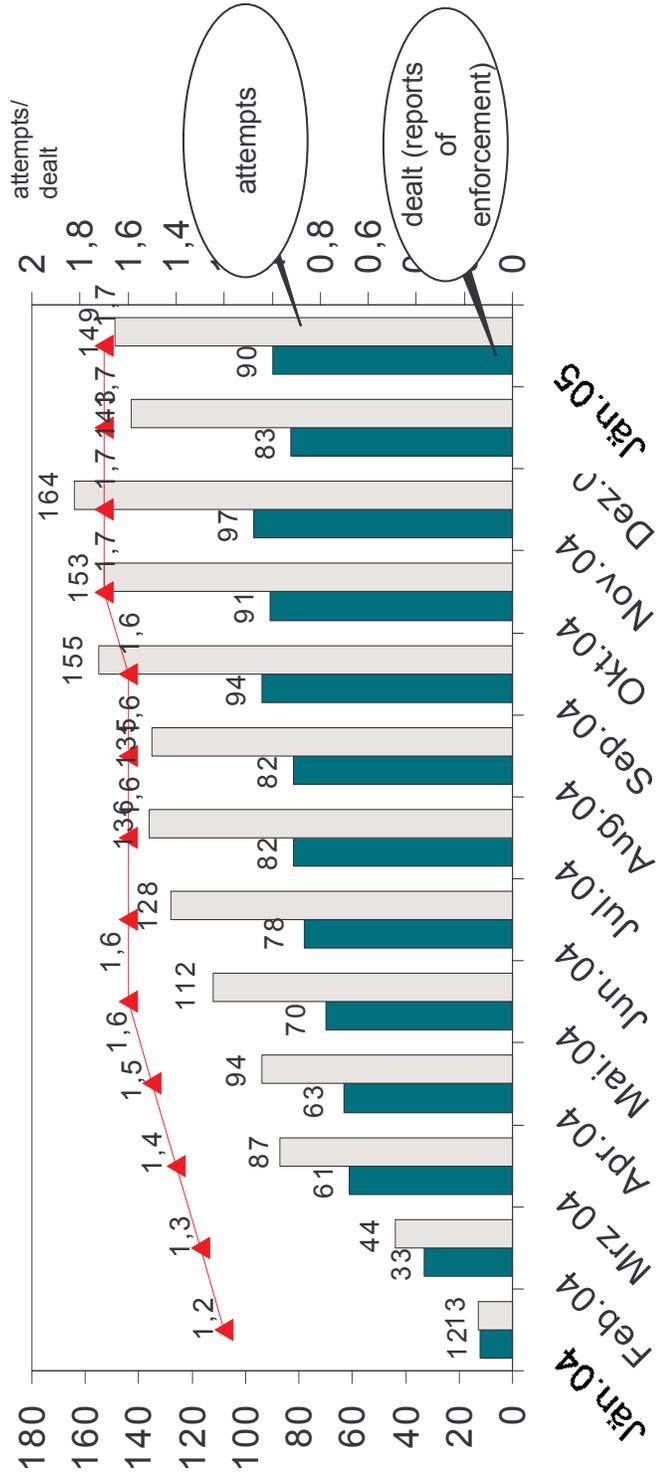
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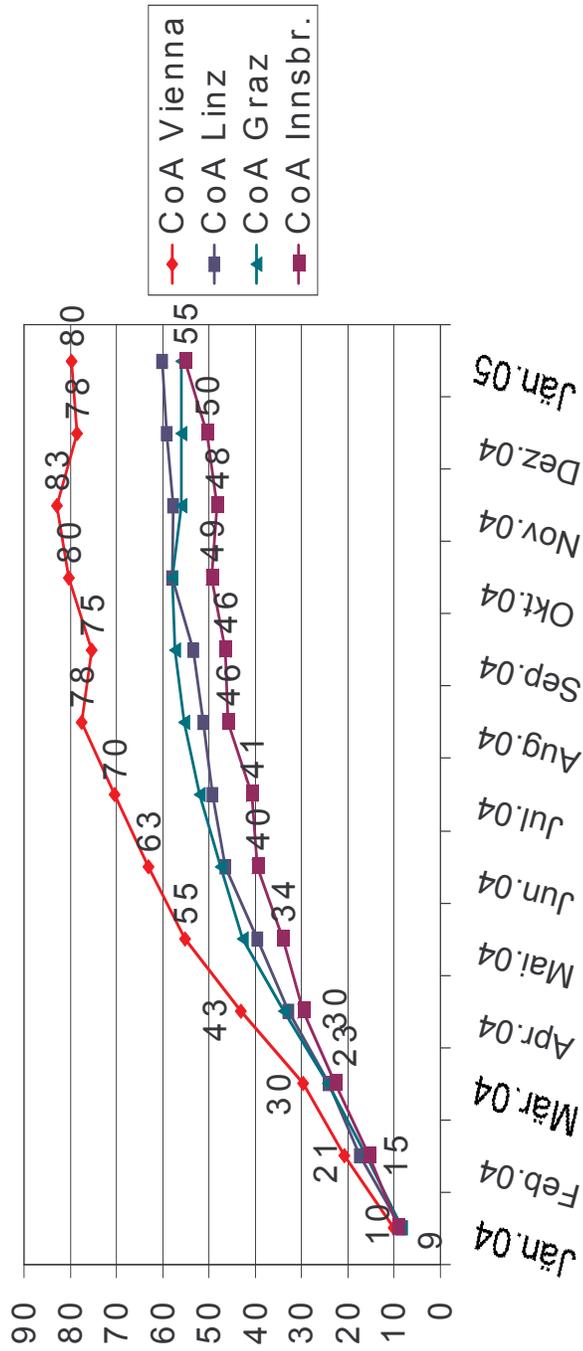
## Development of dealt cases and attempts of enforcement

Base: dealt „FEX-Aufträge (ohne Sperrfrist)“  
Amount of dealt cases, attempts (in thousands.)



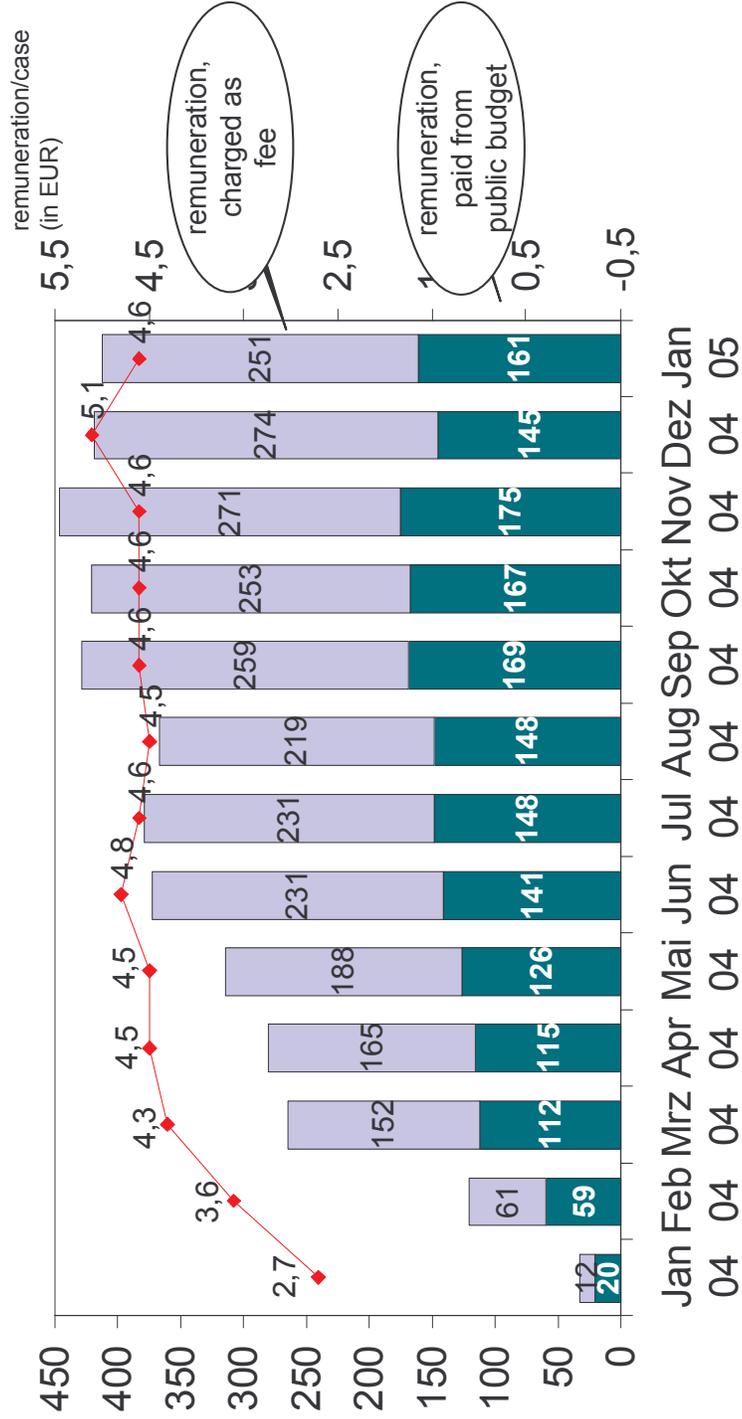
## Development of duration of procedure FEX

Base: BRZ-Data, dealt FEX, without dealt "Sperrfrist",  
Average time (days)



## Development of FEX-budget

Base: dealt FEX-orders (without „Sperrfrist“)  
Paid remunerations (in thsd. EUR)



## Development of FEX-budget per Court of Appeal

Base: BRZ-data, dealt cases (without „Sperrfrist“), Paid remuneration (in thsd. EUR)

remuneration/  
case (EUR)

