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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

PILOT-SCHEME FOR EVALUATING JUDICIAL SYSTEMS¹

This Pilot-Scheme has been adopted by consensus by the CEPEJ at its 2nd
meeting on 3 – 5 December 2003

¹ This Pilot-Scheme is a flexible tool and can be revised at a later stage, should some of the questions prove difficult or impossible to reply or should the structure not be clear enough.

PILOT-SCHEME FOR EVALUATING JUDICIAL SYSTEMS

COUNTRY: Austria	
Year of reference : 2002 (wherever possible, if not stated otherwise)	
Contact: Bundesministerium für Justiz Abteilung PR 6 Museumstrasse 7 1070 Wien	
QUESTIONS	DATA
I. General information	
1. Number of inhabitants	8,067.300 Year : 2002 Source : Austrian Statistics (http://www.statistik.at/)
2. Total annual State/regional public budget	The total amount of estimated expenses is 872,521.026,75 Euro and of estimated incomes is 630,033.138,43 Euro for the year 2002
3. Average gross annual salary	Average gross annual salary of judges and prosecutors was 65.380 (=14x 4.670) Euros in 2002, the average pension 74.900 (=14x 5.350) Euros. Year : 2002 Source : PR6
II. Access to Justice and to all courts	
A. Legal aid/cost of justice	
4. Annual public budget spent on legal aid	13,466.277 € (Austrian institute of "Rechtshilfe", paid to the bar's chamber for services at the courts) Year : 2002 Source :
5. If possible, - Annual public budget spent on legal aid in criminal cases - Annual public budget spent on legal aid in other court cases	n. a. Year : 2002 Source :
6. Total number of legal aid cases (in a year)	n. a. Year : 2002 Source :
7. If possible, - total number of legal aid cases in criminal matters (in a year) - total number of legal aid cases in other court cases (in a year)	n. a. Year : 2002 Source :
8. Does your country has an income and asset test for granting legal aid?	Yes Year : 2002 Source :

<p>9. If yes, what is the maximum income level for granting legal aid?</p>	<p>Depends on the relation between the personal income and financial situation of the person involved and the expected costs of the trial.</p> <p>Year : 2002 Source :</p>
<p>10. Is it possible to refuse legal aid for lack of the merit of the case (eg. concerning the abusive character of legal actions)? If yes, the decision is taken by : an internal instance of the court an external instance a mixed instance court/external other What factors are taken into account ?</p>	<p>Yes, decision by judge; It is taken into account, if the trial is being pended playfully or hopelessly.</p> <p>Year : 2002 Source :</p>
<p>11. Is there a general rule according to which a person has to pay a court tax or fee to start a proceeding at a general jurisdiction court? YES NO If yes, does it concern: - criminal cases <input type="checkbox"/> YES / NO - other than criminal cases <input type="checkbox"/> YES / NO</p>	<p>In general there is a rule according to which a person has to pay a court tax or fee to start a proceeding at a general jurisdiction court in civil cases, but legal aid may also include this fee (see question 9 and 10).</p> <p>Year : 2002 Source :</p>
<p>12. Does your country have a private system of legal expenses insurance for the individuals ?</p>	<p>Yes</p>
<p>13. Do judicial decisions have an impact on who carries judicial costs which are payed by the parties during the procedure ? YES NO If yes, does it concern: - in criminal cases <input type="checkbox"/> - in other than criminal cases <input checked="" type="checkbox"/></p>	<p>Yes</p>
<p>14. In your country, have studies been carried out on the costs of cases brought to courts concerning - Users <input type="checkbox"/> - the State <input type="checkbox"/> Please indicate, if so, the references of these studies published in the [reference's year of reference]</p>	<p>No</p>
<p><i>B. Users of the courts and victims</i></p>	

<p>15. Are there official internet sites/portals (eg. Ministry of justice, etc..) on which the general public may have free access to</p> <ul style="list-style-type: none"> - legal texts (eg. codes, laws, regulations, etc..) <p>- Yes <input checked="" type="checkbox"/> - No <input type="checkbox"/></p> <ul style="list-style-type: none"> - to the case-law of the higher court/s ? <p>- Yes <input checked="" type="checkbox"/> - No <input type="checkbox"/></p> <ul style="list-style-type: none"> - to other documents (for examples legal forms) ? <p>YES <input checked="" type="checkbox"/> NO</p> <p>If yes, please give the internet address</p>	<p>www.ris.bka.gv.at www.bmj.gv.at</p>
<p>16. Is there a public and free-of-charge for victims specific information system to inform and to help victims of crimes ?</p> <p>- Yes <input checked="" type="checkbox"/> - No <input type="checkbox"/></p>	<p>For further information look at www.opfernotruf.at www.notruffueropfer.at (available only in German)</p>
<p>17. Is there a public, free of charge and personalised specific information system, managed by the police or the justice system, on the follow up given to complaints by victims of crime?</p> <p>- Yes <input type="checkbox"/> - No <input checked="" type="checkbox"/></p>	<p>Not in that specific way. Generally everyone can raise a complaint in case of any treatment by an official or authority at the Ombudsman "Volksanwaltschaft" (see question 20).</p>
<p>18. Does your country have a public compensation fund to compensate financially victims of crimes?</p> <p>- Yes <input checked="" type="checkbox"/> - No <input type="checkbox"/></p>	<p>Such a public compensation fund exists, but not all damages to victims are refundable (e.g. compensation for pain and suffering). On this account the Austrian Ministry of Justice is planning to establish a public compensation fund to help all victims of a criminal act, who are in financial distress.</p>
<p>19. Does your country have users' or legal professionals' (judges, lawyers, officials, etc.) inquiries to measure the public trust and the satisfaction of the services delivered by the judiciary? If yes, please specify (national level public inquiries or court level inquiries)</p>	<p>Not regularly. The Ministry of Justice does public inquiries on demand.</p>

<p>20. Is there a national or local procedure for complaints regarding the bad functioning of the judiciary (eg. through an ombudsman)? at the court's level/internal procedure YES/NO at the court's level/external procedure YES/NO at the national level/internal procedure YES/NO at the national level/external procedure YES/NON</p>	<p>Referring to the administration of justice exists an institution "Volksanwaltschaft" (ombudsman), which has no power to evaluate the performance of judiciary itself.</p>
<p>21. As a general rule, do the institutions which receive a complaint have an obligation to respond and/or to deal with the complaint within a certain time limit? Time limit for the answer YES/NO Time limit for the dealing of the complaint YES/NO</p>	<p>Not within a specific time limit, but within proper time.</p>
<p>III. Functioning of courts and efficiency of justice</p>	
<p>A. Functioning</p>	
<p>22. Total number of courts</p>	<p>165 (1.1.2005) ordinary courts</p>
<p>23. Number of general jurisdiction first instance courts</p>	<p>160 (1.1.2005) Year: 2005 Source: PR 6</p>
<p>24. Number of specialised first instance courts Specify the different areas of specialisation</p>	<p>In commercial cases a special District Court ("Bezirksgericht für Handelssachen") and a Commercial Court serving as a First instance court ("Handelsgericht") have been established only in Vienna. Special District Courts and special courts of first instance have been set up in Vienna (one First instance court for civil and one for criminal cases) and in Graz for civil cases; A special Labour and Social Court ("Arbeits- und Sozialgericht") acts in Vienna as a court of first instance in disputes arising from employment relations and certain branches of the social insurance system Year: 2005 Source: PR 6</p>
<p>25. Number of professional judges sitting in courts (present the information in full time equivalent and for permanent posts)</p>	<p>1.732 fte (01.04.2003; incl. substitution judges ("Ersatzkräfte"), but without substituted judges ("Ersatzfälle")) Year: 01.04.2003 Source: PR 6</p>
<p>26. Number of non-professional judges</p>	<p>n.a.</p>

sitting in courts (present the information in full time equivalent and for permanent posts)	Year : 2002 Source :
27. Number of non-judge administrative staff who are working in courts (present the information in full time equivalent and for permanent posts)	5.401 fte Year : 31.12.2002 Source : PR 6
28. Annual budget allocated to all courts	561,715.000 € (including public prosecutors) Year : 2004 Source : III 1
29. Annual budget allocated to the Ministry of justice or the institution (for example Judicial Council) which is responsible for the functioning of the courts ?	51,201.000 € Year : 2004 Source : III 1
30. Did the budget for justice increase during the last 5 years? Can you give figures?	Yes. 1999 792,256.346,18 € 2000 794,016.118,84 € 2001 808,121.915,94 € 2002 809,646.000,00 € 2003 887,541.000,00 € Year : 1999 - 2003 Source : III 1
31. Which institution is formally responsible for setting up the budget devoted to courts ? The ministry of Justice (or equivalent) ? The Government ? The Parliament ? The Judicial Council ? The Courts	The Parliament (chamber of deputies) Year : 2002 Source : III 1
32. Who manages the budget of the courts (President of the Court ? The person administratively responsible for the court ?)	The President of the Supreme Court and the Presidents of the Courts of Appeals as well as the Office of the Procurator General and the Prosecutor's Offices at the level of the Courts of Appeals, together with the Federal Ministry of Justice. In certain cases the cooperation with the Federal Ministry of Finance is necessary. Year : 2002 Source : III 1
33. Which institution is responsible for arranging and scheduling the court hearings/sessions? in criminal cases X - in other than criminal cases X	The judge Year : 2002 Source : PR 6
B. Efficiency	
34. Total number of criminal cases received by the public prosecutor (in a	600.451

year)	
35. Total number of criminal cases dropped by the public prosecutor (in a year) Please indicate also, out of this total, those dropped as the offender has not been identified	477.891 and out of this there are 370.570 offender are not identified Year : 2002 Source : annual prosecution statistics (PR 3)
36. Total number of criminal cases which are concluded by a sanction/measure imposed/negotiated by the public prosecutor (in a year)	42.126 persons not cases Year : 2002 Source : annual prosecution statistics (PR 3)
37. Total number of criminal cases charged by the public prosecutor before the courts (in a year)	65.698 Year : 2002 Source : annual prosecution statistics (PR 3)
38. Total number of incoming criminal cases in the courts concerning robbery cases (in a year)	n.a. Year : Source :
39. Total number of judicial decisions, concerning robbery (in a year). Please indicate also if possible: Number or % of convicted persons Number or % of acquitted persons	543 persons not cases Year : 2002 Source : annual prosecution statistics (PR 3)
40. Percentage of decisions concerning robbery subject to an appeal to a higher court (in a year)	n.a. Year : Source :
41. Total number of incoming criminal cases in the courts, concerning intentional homicide (in a year)	n.a. Year : Source :
42. Total number of judicial decisions, concerning intentional homicide (in a year) Please indicate also if possible : Number or % of convicted persons Number or % of acquitted persons	57 persons not cases Year : 2002 Source : annual prosecution statistics (PR 3)
43. Percentage of decisions concerning intentional homicide subject to an appeal to a higher court (in a year)	n.a. Year : Source :
44. Total number of incoming civil and administrative cases in the courts (in a year)	The Austrian courts have no competence concerning administrative cases; the total number of civil cases was 853.752 incoming litigant cases in first instance incl. semi-automated pay-orders and 179.241 without semi-automated pay-orders. Year : 2002 Source : annual court statistics
45. Total number of judicial decisions in civil and administrative matters (in a year)	863.080 outgoing litigant decisions in first instance (incl. semi-automated pay-orders and "other" litigant civil cases than judgments), 75.844 of them were judgments in litigant civil disputes. Year : 2002 Source : annual court statistics (PR 6)

46. Percentage of decisions concerning civil and administrative matters subject to an appeal to a higher court (in a year)	29,63% of the civil litigant decisions of the District Courts (Bezirksgerichte) and 53,40% of the civil litigant decisions of the Courts of 1st Instance (Landesgerichte) were subjects to an appeal to a higher court. Year : 2002 Source : annual court statistics (PR 3)
47. Total number of incoming divorce cases in the courts (in a year)	25.199 Year : 2002 Source : annual court statistics (PR 3)
48. Total number of judicial decisions in divorce cases (in a year)	n.a. Year : Source :
49. Percentage of decisions concerning divorce cases subject to an appeal to a higher court (in a year)	n.a. Year : Source :
50. Total number of incoming dismissal cases in the courts (in a year)	n.a. Year : Source :
51. Total number of judicial decisions of dismissal cases (in a year)	n.a. Year : Source :
52. Percentage of decisions concerning dismissal cases subject to an appeal to a higher court (in a year)	n.a. Year : Source :
<i>IV. Use of Information Technology in the court</i>	
53. Annual IT Budget allocated to the courts (if possible in Euros)	31,124.000 € (including public prosecutors) Year : 2004 Source :
54. In general, do the courts in your country have computer facilities - for judges - Yes <input checked="" type="checkbox"/> - No <input type="checkbox"/> - for non-judges court staff - Yes <input checked="" type="checkbox"/> -No <input type="checkbox"/>	Year : 2002 Source :
55. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the judiciary. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> If yes, please specify the name and the adress of this institution	Federal Ministry of Justice Museumstrasse 7 1070 Wien Austria
56. What kind of facilities can be used by the clients of the courts to communicate with the courts (multiple choices are possible): <ul style="list-style-type: none">• Telephone• Mail• Fax• E-mail• Internet	<ul style="list-style-type: none">• Telephone• Mail• Fax• (E-mail)
57. Is there an electronic form to carry out certain procedural steps?	Yes (i.e. default actions covering financial disputes involving a value

	not exceeding € 30.000) Year: 2002 Source : PR 6
V. Fair trial	
58. Percentage of adversary judgements in criminal cases in first instance	n.a. Year : 2002 Source :
59. Is there a right to an interpreter for all those within your jurisdiction if the persons cannot understand or speak the language used in court?	Yes
60. Is there an effective remedy to a superior jurisdiction for all cases?	Yes (at least to a second instance)
61. Are reasons given for all prison sentences ?	Yes
62. Average length, in days, of robbery cases from the formal beginning of the prosecution until the first instance judgment	n.a. In general criminal cases at the Courts of 1 st Instance ("Landesgericht") were decided within 2,9 months on average. Year: 2002 Source : Leistungsbericht der österreichischen Bundesverwaltung
63. Average length, in days, of robbery cases from the formal beginning of the prosecution until the appellate judgment	n.a. In general all appeals to the Courts of Appeal in criminal cases were decided within 0,96 months on average (but also including appeals against simple court orders). Year: 2002 Source: annual court statistics
64. Average length, in days, of divorce cases from the deposit of the complaint until the first instance judgment	n.a. In general 64% of all litigant civil cases were decided within 9 months, 72% within one year, 90% within two years (278 days on average). Year: 2003 Source: Sonderauswertung Verfahrensdauer
65. Average length, in days, of divorce cases from the deposit of the complaint until the appellate judgment	n.a. In general all appeals to the Courts of 1 st Instance as a 2 nd instance court (Landesgericht als Berufungsgericht) in civil matters were decided within 2,16 months on average (but also including appeals against simple court orders). Year : 2002 Source : annual court statistics
66. Average length, in days, of dismissal cases from the deposit of the complaint until the first instance judgment	n.a. In general 70,62% of all labour disputes are decided within 9 months, 81,38% within 1 year, 96,22% within two years (246 days on average). Year : 2003 Source : Sonderauswertung Verfahrensdauer
67. Average length, in days, of	n.a.

dismissal cases from the deposit of the complaint until the appellate judgment	In general all appeals to the Courts of Appeal in labour matters were decided within 2,4 months on average (but also including appeals against simple court orders). Year: 2002 Source: annual court statistics
68. Do you, on a regular basis, measure the size of backlog cases in the courts ?	Yes
69. Do you have a way of analysing the queueing time during judicial procedures ? If yes, please specify.	No
VI. Judges	
70. Gross annual salary of a first instance professional judge at the beginning of his/her career	€ 28.145,60 Year: 2002 Source: Judge Office Law
71. Gross annual salary of a judge of the Supreme Court or of the highest appellate court	€ 110.698 Year : 2002 Source : Judge Office Law
72. Can judges combine their work with other professions (for example as a University professor, arbitrator, consultants)? YES x NO If yes, please specify	Judges might perform extra-judicial activities. The Judge Office Law knows two types: "Nebenbeschäftigung" (§ 63 Judge Office Law ("RDG")) and "Nebentätigkeit" (§ 63a Judge Office Law ("RDG")). "Nebenbeschäftigung" is an extra activity outside the judicial function, which might not be affected by the extra activity anyway. If this could not be guaranteed, it is forbidden to execute a "Nebenbeschäftigung" (some are explicitly forbidden by law). Beginning, manner and extension has to be reported to the President of the Court of Appeal. "Nebentätigkeit" is an extra activity outside the judicial function, for which the judicial function is a condition. Its examination has to be told or allowed by the President of the Court of Appeal. Any activities interfering with the official duties must be forbidden by the President of the Court of Appeal.
73. Are judges recruited and nominated by an independent institution ? If yes, who are represented in this institution :	See the attached file "Austrian Judiciary - recruitment and training of judges.doc" for details!

<p>the members of the judiciary ? YES x / NO members outside of the judiciary YES / NO x A mixture of the two categories referred above ? YES / NO Is the process of selection and nomination carried out according to pre-established procedures ? YES x /NO</p>	
<p>74. Is there a system of initial and continuous training for judges? NO / YES, but not compulsory x / YES, compulsory What is the average percentage of judges who have followed a continuous training session each year ?</p>	<p>In relation to the appointed judges and prosecutors each judge/public prosecutor participates to about 3 to 4 training days a year on an average.</p>
<p>75. Is there a system of supervision and control on the courts - other than through appeal ? YES x NO If yes, please specify</p>	<p>Inner Revision; Supervision and control is referring to the quantity of work done by the judge (electronic statistics).</p>
<p>76. Is there in your country a system of temporary judges ? YES /NO x If yes, are these temporary judges paid on the basis of their activity ? YES / NO If yes, please specify</p>	<p>Year : 2002 Source :</p>
<p>77. Annual number of disciplinary proceedings against judges</p>	<p>33 on average Year : 1990-2002 Source : PR 6</p>
<p>78. Annual number of sanctions against judges</p>	<p>In 231 cases (53,6%) the proceeding ended in a way of sentence. Year : 1990-2002 Source : PR 6</p>
<p>VII. Public prosecutors</p>	
<p>79. Annual budget for the public prosecution</p>	<p>n. a. (see question 28) Year : 2002 Source :</p>
<p>80. Number of professional public prosecutors (in full time equivalent)</p>	<p>219 (without Ministry) Year : 01.04.2003 Source : PR 6</p>
<p>81. Gross annual salary of a public prosecutor at the beginning of his/her career</p>	<p>42.792,40 € Year : 01.01.2003 Source : § 42 GehG</p>
<p>82. Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court</p>	<p>113.022 € Year : 01.01.2003 Source : § 42 GehG</p>
<p>83. Can public prosecutors combine their work with other professions? YES x / NO If yes, please specify</p>	<p>The definition for extra activities differs from those for the judges (see question 72): The Office Law (BDG 1979) knows two types: "Nebentätigkeit", regulated</p>

	<p>in § 37 BDG 1979 (Office Law) and “Nebenbeschäftigung”, defined in § 56 BDG 1979 (Office Law).</p> <p>”Nebentätigkeit“ is an extra activity for the authority’s purpose (might be also within a function of a juristic person of private law in public ownership), separated from the regular duties of the prosecutor.</p> <p>“Nebenbeschäftigung” of public prosecutors is an extra activity outside the official function and any “Nebentätigkeit”, which might not be affected by the extra activity anyway.</p> <p>Any profit orientated “Nebenbeschäftigung” (especially those within juristic persons of private law) have to be reported to the office authority immediately.</p> <p>Any activities interfering with the official duties must be forbidden by the office authority.</p> <p>Year : 2004 Source :</p>
<p>84. Are public prosecutors recruited and nominated by an independent institution ? If yes, who are represented in this institution : the prosecutors ? YES / NO other stakeholders outside ? YES / NO a mixture of the two categories referred to above ? YES /NO Is the process of selection and nomination done according to pre-established procedures ? YES / NO</p>	<p>See question 73</p>
<p>85. Is there a system of initial and continuous training for public prosecutors? NO / YES, but not compulsory x/ YES, but compulsory What is the average percentage of prosecutors who have followed a continuous training session each year ?</p>	<p>See question 73</p>

86. Is there a system of supervision and control on the public prosecutors YES <input checked="" type="checkbox"/> / NO If yes, please specify	Yes, within the hierarchic system of "Dienst- und Fachaufsicht" (supervision and supervisory power) by the next higher level of service. Year : 2002 Source : PR 6
87. Annual number of disciplinary proceedings against public prosecutors	1 Year : 2003 Source : PR 7
88. Annual number of sanctions against public prosecutors	0 Year : 2003 Source : PR 7
VIII. Lawyers	
89. Number of lawyers practising in your country	App. 5.900 Year : 2002 Source : PR 6
90. Is there a national bar association?	Yes Year : 2004 Source :
91. Have quality standards been formulated for lawyers ? YES <input checked="" type="checkbox"/> / NO If yes, who is responsible for formulating these quality standards? bar association legislator other Please specify	Legislator (Rechtsanwaltsgesetz) Year : 2002 Source :
92. Are there disciplinary proceedings for lawyers? YES <input checked="" type="checkbox"/> /NO	Year : 2002 Source :
93. Annual number of disciplinary proceedings against lawyers	n.a. Year : 2002 Source :
94. Annual number of sanctions against lawyers	n.a. Year : 2002 Source :
95. Is there possibility to complain about lawyers' performance? YES <input checked="" type="checkbox"/> / NO If yes, please specify	At the chamber of attorneys at law. Year : 2004 Source :
96. What is the amount paid to a lawyer by the State in respect of legal aid for a first instance divorce case ?	Differs from case to case. If he succeeds, the other party pays him, if not the State pays a certain amount into the lawyer's fund of pension. Year : 2002 Source :
IX. Mediators and mediation proceedings	
97. Number of persons registered as a mediator	As far as the ministry of justice is competent: 0 (applications are still pending) Year : 2002 Source :
98. How much public budget is devoted to mediation ?	There is no public budget devoted especially to mediation.

	Year : 2004 Source : III 4
99. Number of incoming mediation cases (in a year)	Criminal Diversion: 63408 Year : 2003 Source :
100. Number of cases solved through mediation (in a year) - in criminal cases X - in other than criminal cases <input type="checkbox"/>	Criminal Diversion: 53860 Year : 2003 Source :
101. In which areas of law is mediation most practised and successful in your country? - in criminal cases <input type="checkbox"/> - in other than criminal cases <input type="checkbox"/>	criminal cases: s. Question 99 and 100 other cases: n.a. Year : 2004 Source :
X. Enforcement agents and execution of court decisions	
102. Number and types of enforcement agents - in criminal cases <input type="checkbox"/> - in other than criminal cases <input type="checkbox"/>	393,31 fte. Year : 01.01.2002 Source : PR 6 2843 (penal staff) Year : 2004 Source : III 2
103. Is there an institution to supervise or control the activities of enforcement agents? YES <input checked="" type="checkbox"/> / NO If yes, please specify	"FEX-Planungs- und Leitungseinheit" at the Court of Appeal in civil cases. Year : 2004 Source : 4 Courts of Appeal as authorities in matters of personnel Year : 2004 Source : III 2
104. Annual number of disciplinary proceedings against enforcement agents	2 (civil matters) 13 (penal staff)/2003 Year : 2003 Source : PR 7
105. Annual number of sanctioned enforcements agents	0 (civil matters) 10 (penal staff)/2003 Year : 2003 Source : PR 7
106. Is there a possibility to file a complaint against an enforcement agent? YES <input checked="" type="checkbox"/> / NO If yes, please specify	Complaints against an enforcement agent can be filed because of disregarding of enforcement or incorrect enforcement. If a court is in delay, parties have the possibility to apply at the higher court for fixing of an appropriate time limit. No figures available (all referring to civil matters). Complaints are possible, the courts of appeal and the ministry as authorities in matters of personnel will investigate the complaints and take proper actions (referring to penal staff). Year : 2002 Source :

<p>107. Does the court play a role in the execution of court decisions? YES <input checked="" type="checkbox"/> / NO If yes, please specify</p>	<p>The court has to decide about the execution (needs a valid title) and its form (civil matters). Year : 2002 Source :</p>
<p>108. Do the courts have the competence to decide against public authorities ? YES <input checked="" type="checkbox"/> / NO Are the courts involved in execution decisions against public authorities ? YES <input checked="" type="checkbox"/> / NO</p>	<p>Year : 2002 Source : PR 6</p>