

REMUNERATIONS IN THE JUDICIARY

Evaluation and analysis of the current frame and
practice for determining of the main and
supplementary remuneration of magistrates in
Bulgaria

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The opinions, evaluations, statements and recommendations presented in the paper represent solely the point of view of the authors and they should be viewed as such. They do not represent the opinion of the main partners under the project as well as of the financing institution.

This is summary of the main findings, conclusions and recommendations of the full analysis available in Bulgarian [HERE](#).

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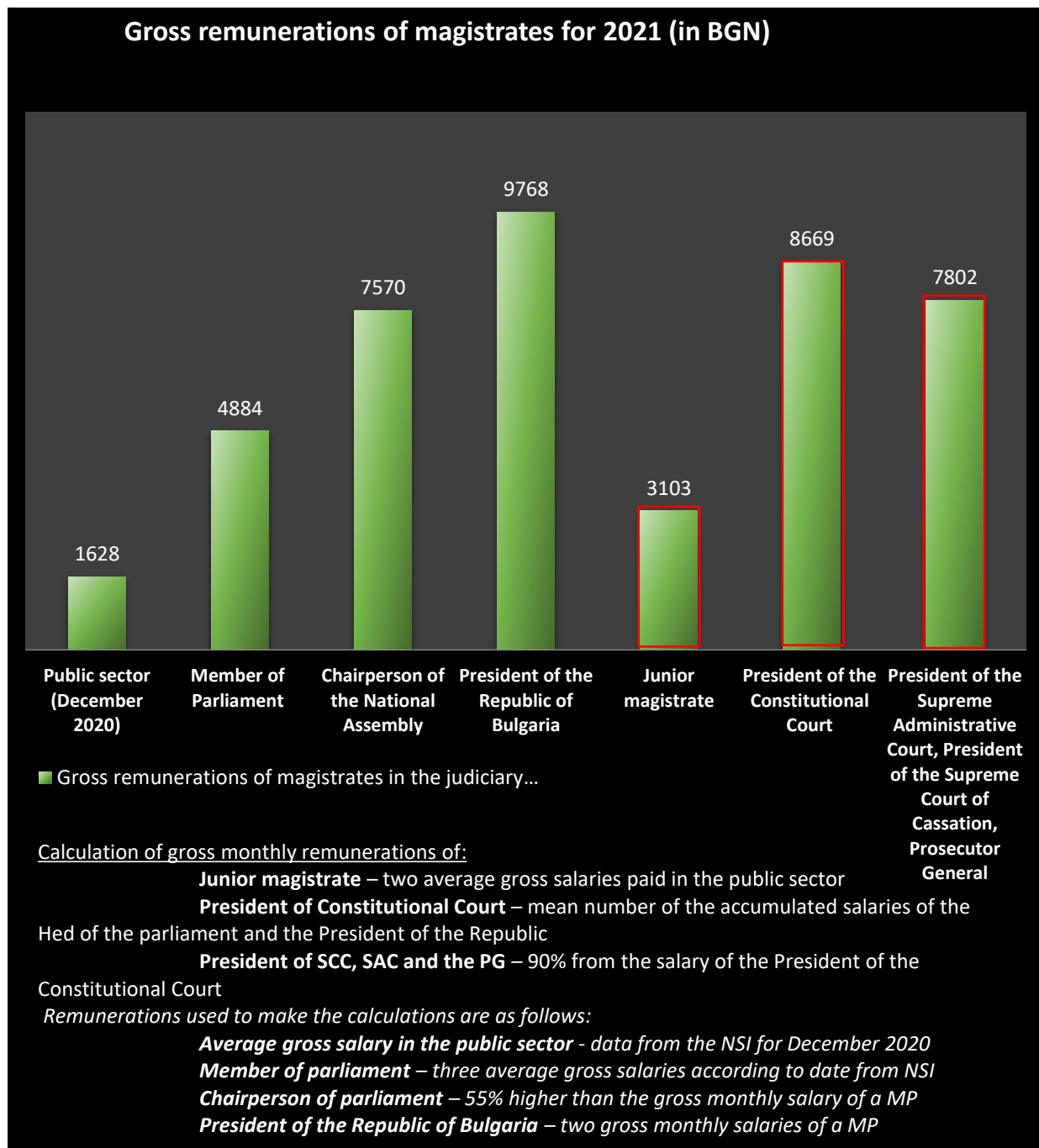
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The goal of the paper is to review the publicly available and accessible information about the normative regulation, statistical data, strategical and other papers and their implementation related to the remuneration of magistrates. Furthermore, it reviews the motives or the lack of such for determining of the concrete levels of the remunerations in the system, as well as the levels of caseload in the different courts and cities and the total amount of cases. The goal of the analysis is neither to prove or to decide upon the necessary number of magistrates in the Bulgarian judiciary, nor to say how much they should be paid. It is to evaluate the current overall framework related to the remunerations in the judicial system, make relevant conclusions and recommendations.

The legal framework /primary and secondary legislation/ shows some controversies, however, it is clear enough and needs further improvement. At the same time, it does not define the criteria and the conditions under which the remunerations in the judicial system are determined. This calls for additional work on the side of the SJC, because, according to the law, it is the SJC Plenary that sets the remunerations of the magistrates. This hasn't been done so far, therefore, the current situation creates possibilities for broad discretions of the administrative heads /presidents of courts and heads of prosecution offices/ when determining the supplementary remunerations of magistrates, thus potentially allowing for exercising pressure over magistrates.

The authors of the analysis have made an attempt to calculate the gross remunerations of junior magistrates, the Presidents of the two Supreme Courts in the country, the Prosecutor General, as well as of the President of the Republic of Bulgaria, the Chairperson of the National Assembly and a member of the parliament. The calculations are based on the legal texts describing the way remunerations are structured and on data publicly available and compiled by the National Statistics Institute. The outcome is approximate and presented in the table below:

Graphic 1



In its first report for Bulgaria under the new horizontal Rule of Law Mechanism¹, the European Commission makes a series of recommendations among which also such related to the supplementary remuneration of judges and prosecutors. According to the EC, the model for setting supplementary remuneration for the magistrates creates a risk for an undue influence over them. The recommendation states the necessity for the establishment of **more detailed, clear and objective criteria for**

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0301&from=EN>

determination of these remunerations, as well as to restrict the role of Presidents of courts in this process. ²

Outside these concrete, country related recommendations, the European Commission for Democracy through Law (more popular as the Venice Commission), the Committee of the Ministers at the Council of Europe, CEPEJ, the European Network of Councils for the Judiciary and others, have also provided recommendations and suggestions for the setting of clear and objective standards when determining magistrates' remunerations, as a guarantee for independence of judges and effective performance of their duties reciprocal to the responsibility they bear. ³

At the same time, the level of perception for independence in the judiciary in Bulgaria continues to be very low. Only 37 % of the citizens think, that independence of the judicial system is in a „*relatively good or very good*“ condition. Results are under the average level among the business too - 45 % think that independence of the judicial system is in a „*relatively good or very good*“ condition.⁴

In addition to these data, some other similar results from surveys can be shown.⁵ Approximately 80% of the citizens are of the opinion , that there are no official guarantees for the independence of the judicial power in Bulgaria. Almost the same percentage of citizens think, that the organization of the judicial system does not provide effective access to justice. The same study presents the opinion, that high remunerations are not a condition which automatically guarantees ethical and unbiased duty performance – over 40% of the respondents believe that remunerations in the judicial system do not create such conditions and another 30% have responded, that integrity and independent performance of professional obligations are not dependent on the amount of the remuneration.

Such categorically stated public opinion was probably influenced by the society need for more steady results both with regard to the independence in the judiciary and with regard to restricting corruption – mainly at the higher levels of the institutions. In that situation, remuneration, regardless how

² In the light of this recommendation at the plenary of the SJC from October 22, 2020, the “Budget and finances” Committee suggested the establishment of a **working group** to draft suggestions for changes and amendments of the Rules for determination and payment of supplementary remunerations of magistrates setting clear and objective criteria for this. At present the working group has not come up with concrete suggestions.

³ Such recommendations can be seen at:
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e),
<https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>,
https://www.encj.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf

⁴ Justice Scoreboard 2020, graphics 44 and 46. The level of perception for independence is categorized in the following way: very low (under 30 % from the participants perceive the independence of the judicial system as a relatively good or very good); ниско (между 30 % и 39 %), average (between 40 % and 59 %), high (between 60 % and 75 %), very high (over 75 %). See also a survey carried about among judges in 2019, which showed that 50 % of them have encountered disregard of their independence coming from the government and the media. European Network of Councils for the Judiciary (ENJC) (2019), Independence and Accountability of the Judiciary — ENCJ Survey on the independence of judges, graphics 43 and 45. The survey covers 21 member states.

⁵ Model of pilot report according to art. 30, 2, p. 12 from the Judicial System Act – Annual report on the independence and transparency in the activities of the bodies within the judicial system and the activities of the SJC 2019

high it is, cannot be the only factor influencing the independence or the effectiveness of the work of magistrates. One possible additional explanation could be the fact, that the so called judicial reform has already taken too long of a time and looks unfinished and programmatic budgeting is still lacking. All this is reflecting on the lack of arguments for one action or another within the system, impossibility for outside observers to analyze the reports coming from the system and finally yet importantly, the rigid model of work within the judiciary which calls for serious optimization.

Programmatic budgeting supports first level spending units in tracking the outcomes from the activities of the budget organizations and the respective expenses. For that purpose, there are legal norms which provide for the possibility to change and adapt through the year, when need be, the already approved spending for the various areas, politics and budget programmes. The existence of a programmatic budgeting allows for an adequate planning and management of the human resources and the necessary means for this.

In 2012 Operative Programme „Administrative Capacity” finances a project implemented by the Supreme Judicial Council through which the judicial system shall be supported in making the transition to a programmatic budgeting. The project is called „Introducing modern, reliable and efficient procedures for planning and implementing of the budget of the judicial power“ and amounts totally to 597 886 BGN /appr. 300 000 Euro/ out of which 392 700 BGN /appr. 200 000 Euro/ are a grant. The project ends in 2014 and one of its accounted results is the development of a Methodology for a programmatic budgeting within the judicial power.⁶ The latter was not found in the publicly available sources of information. At the same time the activities under this project are almost identical /see table 1/ with the new project implemented by the SJC called “ Introducing programmatic budgeting in the bodies of the judicial power“, financed by the Operative Programme “Good Governance” with 700 000 BGN /appr. 350 000 Euro/. The time for the implementation of this project was prolonged until 2022.

Table 1

| Activities under the Administrative Capacity Operative Programme⁷ | Activities under the Good Governance Operative Programme⁸ |
|---|---|
| | |

⁶ <http://umispublic.government.bg/srchProjectInfo.aspx?id=69277> [05.02.2021]

⁷ <https://www.eufunds.bg/archive/documents/1347870240.pdf>

⁸ <http://www.vss.justice.bg/page/view/2304?print=1>

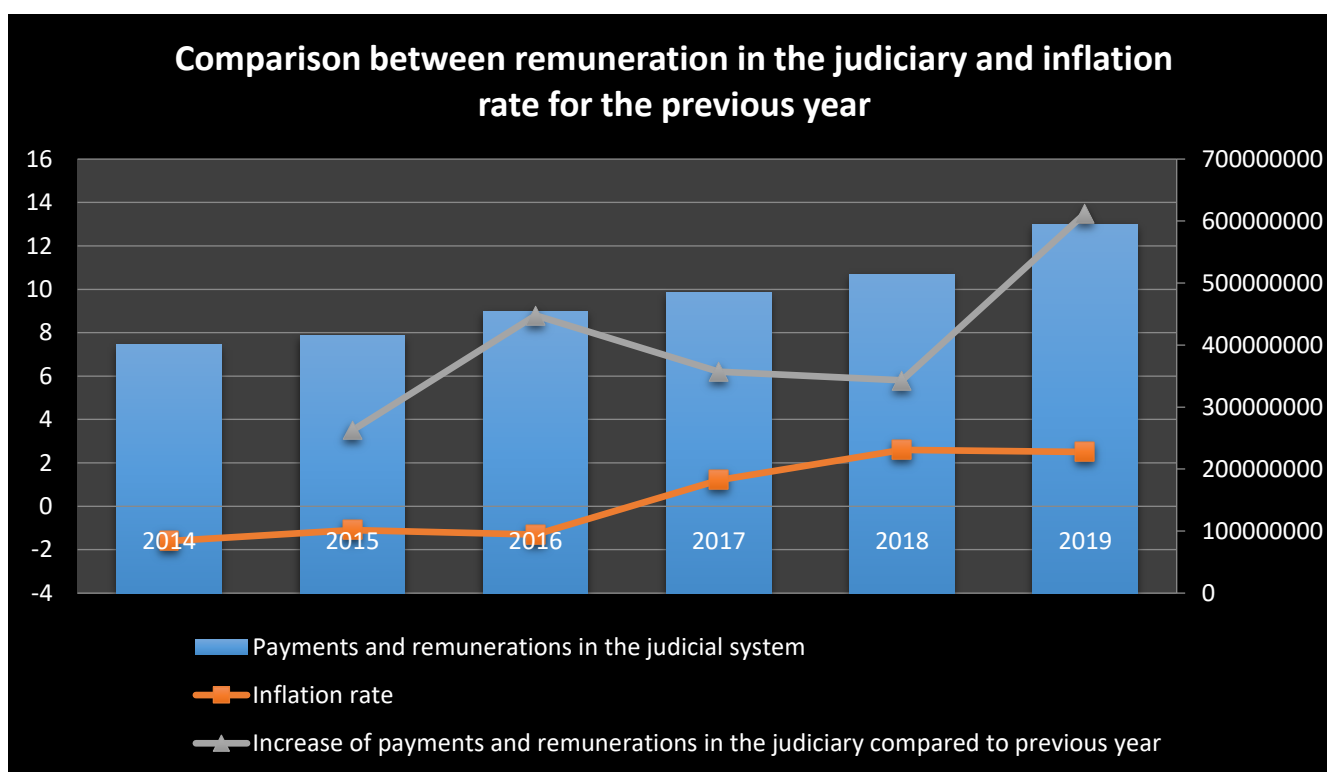
| | |
|---|--|
| <p>Activity 1: Organization and project management.</p> <p>Activity 2: Analysis of the existing budget practice with the bodies of the judicial power.</p> <p>Activity 3: Introducing the approach of the development of a programmatic and results oriented budget of the SJC and pilot testing in three bodies of the judiciary.</p> <p>Activity 4: Carry out of an accompanying training of representatives from the operative departments for planning, development and management of the budget of the judicial system.</p> <p>Activities 5: Activities related to information and publicity.</p> <p>Activity 6: Audit</p> | <p>Activity 1: Setting the policy for budgetary planning in the judicial system according to the principles of programmatic budgeting.</p> <p>Activity 2: Diagnostic overview of the existing budgetary practice in the judicial system.</p> <p>Activity 3: Development of a unified model for programmatic oriented planning and budgeting applicable to the judicial system.</p> <p>Activity 4: Methodologic description of the chosen model for programmatic-oriented budgeting, calculation model respectively.</p> <p>Activity 5: Development of unified processes from the implementation of the programmatic oriented model for budgeting, including the accompanying procedures.</p> <p>Activity 6: Carry out of a pilot testing of the programmatic oriented budgeting model in three typological bodies of the judiciary.</p> <p>Activity 7: Carry out of an accompanying training of representatives from the operative departments for planning, development and management of the budget of the judicial system.</p> <p>Activity 8: Development of scenario for a step by step introduction of a programmatic oriented budgeting.</p> <p>Activity 9: Activities related to information and publicity.</p> <p>Activity 10: Project audit</p> |
|---|--|

The results from the current project are yet to be seen, but fact is, that seven years after the implementation of the first project under Administrative Capacity Operative Programme, the SJC continues to plan and spend its budget, to manage and account for it without programmatic budgeting, i.e. with no preliminary defined goals, clarity about the results achieved and without connecting the financing with the set goals and activities, caseload and objective evaluation of the expenses for the different types of cases, so that an adequate financing of the judiciary is achieved.

Therefore, to a large extent the budget of the judicial system is changing unevenly over the years. It is set in accordance to the expenses made and accounted for the previous years, a situation, which in a lacking programmatic budget cannot be explained in a logical way. The conclusion which can be made is, that there is no data to show what imposes the changes in the budget and what is the logic behind the way the budget of the judiciary is structured.

The situation with the magistrates' remunerations is similar. One possible criteria for changing the spending in the state budget regardless the unit and with missing programmatic budget and clear agenda for policies and goals, is inflation. However, even based on this criteria, it is difficult to find the logic in the budget of the judicial system, especially the raise in the remunerations. The latter are determined in the Judicial System Act. According to it, the lowest monthly remuneration in the judiciary (this is for the junior magistrates) amounts to the double sum of the average monthly salary for people working in the public sector (state employees) where the information about it is taken from the National Statistical Institute. At the same time, the level of remunerations for the rest of the positions in the judicial system, are determined by the Supreme Judicial Council without any economical and financial reasoning.

Graphic 2⁹



Source: SJC webpage and Eurostat¹⁰

⁹ A harmonized index of consumer prices, average annual changing percentage rate is used.

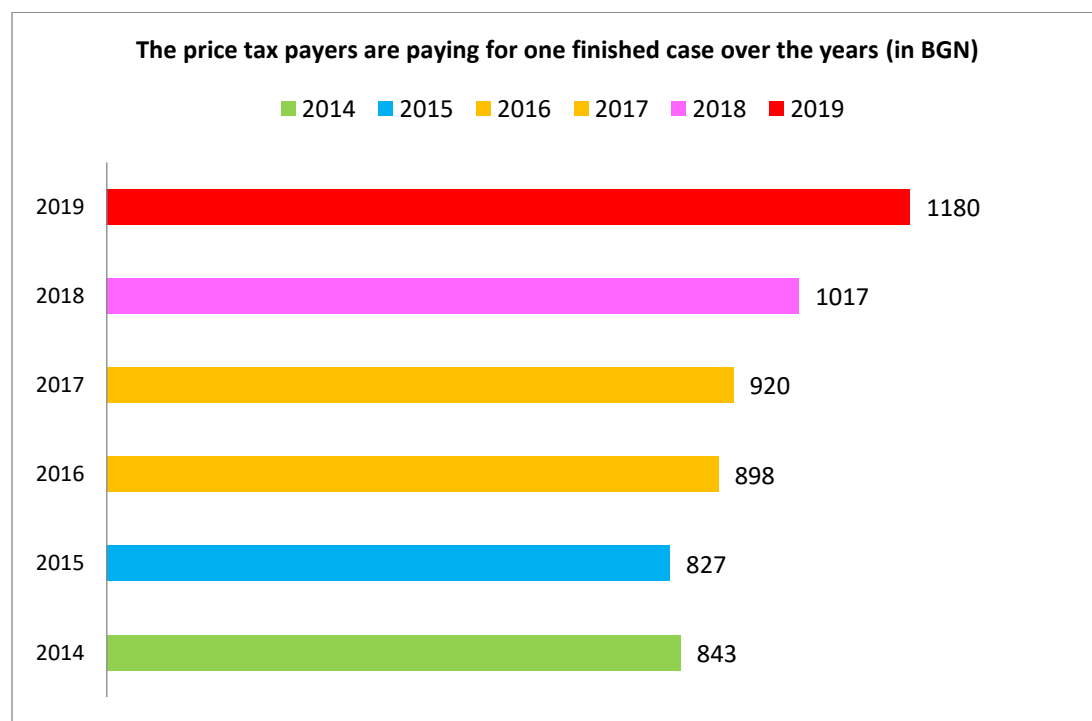
¹⁰ <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00118&plugin=1>

It is understandable that magistrates have to be paid good, because this is also a guarantee for their independence and leads to increased public trust in their work. Nobody is questioning the money spent for remunerations, but what is lacking is the logic behind it, the increase of and the lack of motives. Why at some point they are raised with more than 8% (2016) and after that with 13,5% (in 2019 compared to 2018) having in mind that during that period inflation is going in the other direction? This is happening because no substantive reform regarding remunerations has been carried out and there is no correlation made between it and the administrative reform in the courts and prosecution offices.

There is no clear budget differentiation in programmes and reforms, therefore, it is difficult to make an analysis about the effectiveness and the efficiency of the money spent in the judiciary and their accounting. What can be calculated, though, is how many cases were finalized under any given budget for the respective year or in other words what is “the price” of one finished case, i.e. how much is the tax payer paying for one such case.

Data shows that after 2015 this figure is going up with each year. In 2015 one finished case costed approximately 827 BGN, in 2018 - 1017 BGN and in 2019 (the last year for which data is available) – it is already 1180 BGN.

Graphic 3



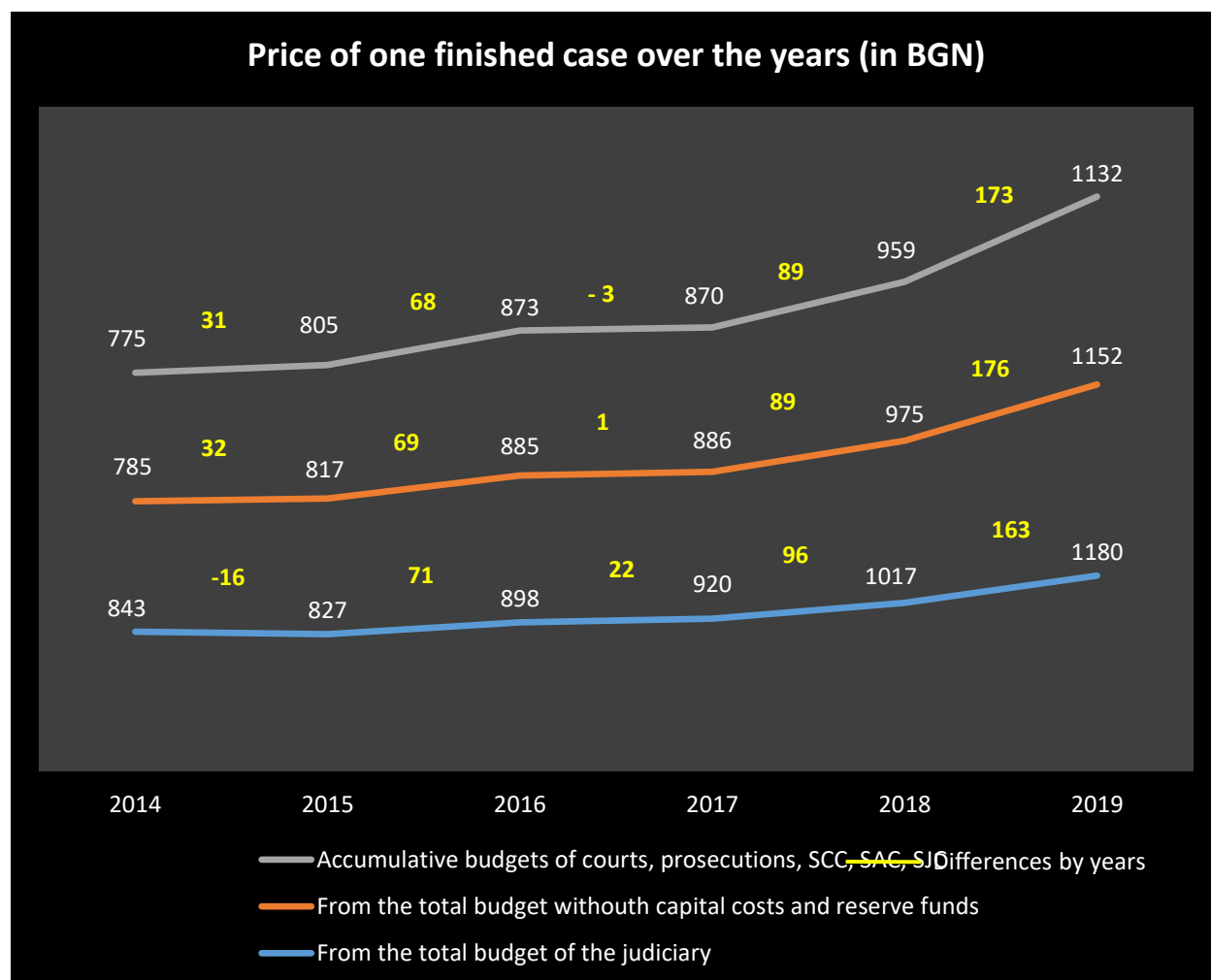
Source: Ministry of Finance and SJC

Regardless how the presented data is viewed, a leading principle in determination of the remuneration cannot be found. In search of such, three different calculations were made with three different entry data conditions:

- All finished cases for a calendar year compared to the whole budget of the judiciary (as it is in Graphic 2);
- All finished cases for a calendar year compared to the budget of the judiciary without the capital costs and the reserve for unforeseen and/or urgent expenses;
- All finished cases for a calendar year compared to the budget of the courts, prosecution offices, SCC, SAC, SJC (this is the budget of the judiciary without the expenses for the National Institute of Justice, the Inspectorate to SJC, the capital costs and the reserve for unforeseen and/or urgent expenses).

In all three models what is marked in yellow is the difference in the cost of one finished case (what it costs to the tax payer) over the years. Once again, the logic for the increase is missing and in the budget sphere this is problematic.

Graphic 4



Source: Ministry of finance and SJC

Even if the differences in the number of finished cases over the years (Table 1) are taken under consideration, again a pattern/principle cannot be found justifying the increase of the price per case and the increase of the budget, respectively.

Table 2

| Year | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Number of cases finished | 546 462 | 567 498 | 574 983 | 617 909 | 590 267 | 588 132 |

Source: SJC

In 2017 the number of cases finished is more than in the next two years (2018 and 2019), but at the same time the amount of the costs for one case is increasing, as it is shown in the graphic. The answer to the question why is this happening is still unclear.

When looking at the graphics a clarification needs to be made and it is, that all calculations are made on the basis of an approved and not specified budget.¹¹ In addition, it has to be said that capital costs are usually calculated but not spent; most probably they are saved and they go to pay supplementary remunerations which get distributed among magistrates. This means that the price paid by the tax payer for one finished case is higher.

¹¹ The judicial system systematically makes corrections to its budget in accordance with the so called specified annual plan – corrections to the budget for the previous year which are made at the beginning of the next calendar year, i.e. the budget year is actually over, but the specified plan for the accounted year is adopted post factum. In other words – the budget gets reshaped and this backdated in accordance to the expenses already made. By doing so, a wrong impression is created that the budget is executed in a perfect way while at the same time the expenses made are more than the budget approved by the parliament. As a result, these “corrections” are officially presented for approval and are adopted by the National Assembly together with the report for the execution of the State budget.

Conclusions

Based on the analysis made it can be concluded that:

- The lack of programmatic budgeting at a central level within the judicial system is a serious problem which demands a swift solution
- Planning of budget, remunerations and division of labour is not based on the idea of achieving some set goals and outcomes. The financing which is initially foreseen as inputs and outputs and the accounted one, are also not related to any set goals, case load and an objective evaluation of the expenses as a break down on type of cases. Consequently, it does not lead to the optimization of the work within the judiciary as one of the main functions of the state.
- There is no publicly available information showing the criteria based on which the remunerations within the judiciary (for the larger part of the people working in the system) are formed, as well as for the supplementary remunerations of the magistrates.
- Information in the media is available about the upcoming reform and optimization of the courts (court map), however, it does not lead to more security within the society about the activities of the SJC. Furthermore, it does not contribute to the increase of the trust in the judiciary.
- Human resources development within the judicial system is not connected to programmatic budgeting.
- Based on the publicly available data, one cannot make a complex analysis of the effectiveness of the spending and the expenses related to magistrates' remunerations – planned and accounted, in the budget of the judicial system for the period of 2014 – 2019.
- There is also no available data for regular public hearings with the participation of professional and specialized NGOs on the topic of the projects related to the reform and optimization of the work in the courts.
- There is also no available data about discussions carried out with the professional organizations related to the structuring of the budget of the judicial system.
- The current secondary legislation regulating the supplementary remuneration of magistrates provide for quite broad powers of the administrative heads (presidents of courts and heads of prosecution offices) – a situation which increases the risk for abuse and unregulated pressure over judges.
- The price of a case increases inversely proportional to the number of the cases and the overall amount of the work.
- Disproportions in the caseload of the judges from the different courts depending on how big a court and a town are, are very high and create tension in the system.
- A representative sociological survey among magistrates shows the necessity for an in depth discussion on the issue about the main and supplementary remunerations in the judicial system

with regard to the development of an unified standard and objective principles for the determination of the remunerations.

Recommendations

Based on the analysis and the conclusions made, the following recommendations can be formed. They are mainly related to the determination of the main and supplementary remuneration of magistrates.

- It is imperative to carry out important reforms related to the unification of the caseload among magistrates from different courts and prosecution offices and optimization of their work.
- The leading principle for determining of the remuneration has to be a combination from the three main criteria – the level /instance/ at which the magistrate is working, his/hers rank and the years of practice.
- Main remuneration of a magistrate should be determined as a percentage from the remuneration of the President of the Supreme Court of Cassation / PG, with a different percentage for the different levels in the system.
- Supplementary remuneration for the magistrates working in the specialized courts/prosecution offices should be eliminated.
- The amount of the supplementary remuneration shall be determined by the General assembly of the judges/prosecutors.
- There should be a qualitative criteria for determination of the supplementary remuneration such as a statement about the ethical behavior/integrity of a magistrate, as well as about the quality of his/hers work /through the instances review/.
- The introduction of programmatic budgeting should happen quickly – there is enough information collected under the two relevant projects /the one which ended in 2014 and the current one/. There is also enough information about the developed instruments as well as experience gained through the pilot testing in three different bodies of the judiciary.
- In the light of the listed recommendations it is advisable to cooperate with the professional and specialized NGOs to inform them about the projects and discuss with them possible solutions for the optimization of the work of the courts.