How to ensure independence of judges in Russia

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Independence of the judicial system is one of the key provisions necessary for the effectiveness of the national law enforcement environment, its competitiveness compared to jurisdiction of other states, and stimulation of economic growth. Only a truly independent court (independent not only from the litigants but also from other branches of government) may help in overcoming legal nihilism. It will also make it possible to transfer a large portion of human interaction into the legal framework and avoid aggravation of conflicts in Russia.

Throughout the last three years the Institute for the Rule of Law has been conducting studies of the Russian judicial system. They included data from surveys conducted among judges, interviews with participants of the processes, experts and judges, analysis, including statistical analysis, of court decisions and other documents. On the basis of these materials we have come up with four primary factors that constrain independence of judges:

1) Influence of chief justices. Their powers significantly exceed those described in the legal acts.
2) Non-transparent multilevel system of judge appointment. It causes inadequate cadre selection and includes possibilities for large-scale influence of various organs of the executive branch, which harms the community of judiciary
3) Influence of the procuracy (of the prosecution) and of the courts of higher instance. They limit the ability of the district judges to acquit, and they violate the principle of equality of litigants during the court proceedings.
4) Work overload of the judges of first instance in courts of general jurisdiction. This limits the possibilities for substantive, rather than formal ("assembly line") approach to justice.

In this document we examine in detail each of the above-mentioned factors and the mechanisms of their influence on the judges. Their aggregate effect is that during awarding a sentence the judges are forced to take into account a significant number of limitations of extra-legal character, including the position of the chief justice, the probability of sentence cancellation, prospects of career growth and of bonus payments, of disciplinary sanctions (including dismissal), as well as rigid procedural terms.

It is impossible to make judges independent immediately. But it is possible to take a number of understandable and realistic measures, which will gradually increase the independence of judges and the role of judicial community. They are discussed in detail in this text. They are concisely listed here (in accordance with the four general factors of dependence of judges) –

1. *To conduct the reform of the institution of courts of general jurisdiction, particularly:*
   We must change the mechanism of appointment of chief justices. The chief justice must be elected by the staff of a particular court for three-year terms with no right of re-election.

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To free the chief justice from the majority of administrative and economic functions that he/she is responsible for now. To do it, there is a need to make the institution of court administrator truly functional.

The institution of chief justices must be separated from the organs of the judicial community, particularly, from the judicial council.

Reorganize the system of transfer of information about current priorities of judicial policy in order to minimize the role of the chief justice. To publish as many documents and recommendations for the information not only of judges but also of other participants of the process.

The system of bonuses must be dismantled. Salary must only be determined by the length of service.

2. *To change the system of judge appointment. This gradual reform may go in one of the three directions:*

Appointment of a significant proportion of judges (60-80%) is transferred on the level of the subject of the Federation.

The primary role in judge appointment is given to the organs of a judicial community. I.e, the president still appoints the judges, but he cannot disagree with the decision of the organs of the judicial community.

The third way requires almost no changes to the law. It presupposes legalization of already existing mechanisms and an increase of their transparency.

3. *To limit ability of the prosecution (the procuracy) to put pressure on judges, in particular:*

To introduce the category of cancellation of sentences arrived at by the lower courts in the cassation and appeal instances for reasons that discredit the judge. Cancellation of the decision must not be considered a mistake of the judge and must not lead to disciplinary measure, aside from those cases when there are signs of improper conduct (low qualification, gross error of the judge)

To introduce legal measures that will limit the ability of the procuracy to appeal acquittal decisions or that will leave the right to appeal only for the aggrieved side.

To introduce a rule in accordance with which the state prosecution in court is presented by the same prosecutor as the one who was occupied with oversight of the operational investigation in the case. To increase the responsibility level of the prosecutor for violations in course of the investigation, to make him interested in legality of the investigation and in high quality of the proof, and not in putting pressure on the judge.

To clearly spell out in the federal law that the experience of work as an investigator or prosecutor is not taken into account during calculation of the years of service as a judge and to simultaneously remove limitations on individuals working as lawyers.

To straightforwardly put a ban on any participation of representatives of security agencies (especially the procuracy and the investigation) in the appointment of judges (entering collegiate organs, participate in inspections)

4. *To significantly decrease the workload of the judges, to decrease the workload of the courts:*

To remove the requirement of mandatory production of the motivational part of the decision in the courts of general jurisdiction, unless one of the sides declares its intention to appeal the case or petitions that the motivational part be produced.

To grant certain procedural authority to assistant judges.

To increase the salary of technical staff of the courts (primarily that of assistant judges) by 2-3 times. This will allow courts to hire more qualified staff, decrease the staff turnover, and put real responsibility on them.

To review and optimize the judicial document circulation in order to decrease the amount of documents necessary for performance of simple procedural actions.

Within the civil procedure it is necessary to conduct a separate analysis of situations in which state organs addressed the courts. There is a need to determine in which cases the state institutions transferred responsibility for small-scale and technical decisions on the court (directing the citizens there instead of solving the issue themselves). The established problematic questions (specific state institutions and issues) must be regulated on the administrative level.