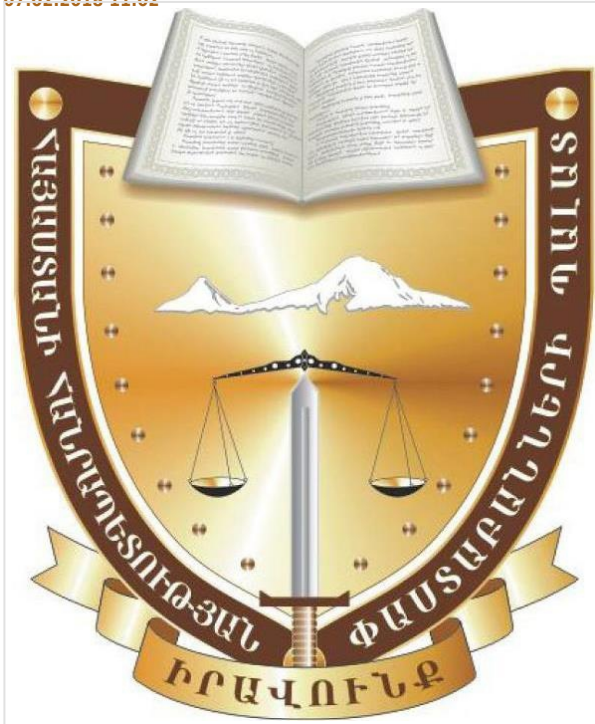


The Attitude of the Chamber of Advocates towards the clarification made by the Ministry of Justice

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The Ministry of Justice of RA (hereinafter "The Ministry") has provided clarification of the statements (hereinafter, Statement) made on the "Code of Civil Procedure" draft (hereinafter, the draft).

In reference to the mentioned clarification, we state the following:

1. The Ministry, within the terms of submission of proposals on the package of draft laws submitted by the National Assembly in the first reading, found that in accordance with Article 78 (2) of the NA Rules of Procedure, the author may make suggestions on the draft as well as present his/her opinion about the other proposals, during his report or concluding speech.

We find it necessary to oppose to this viewpoint by the following counterargument:

The statement contained the procedure of submitting WRITTEN proposals. The latter is regulated by the Article 81(1, 2) of "NA Rules of Procedure" constitutional law. The procedure of submitting written proposals is also defined in paragraphs 1 and 4 Article 69 and paragraph 1 Article 70 of the same law.

Article 70 of the "NA Rules of Procedure" constitutional law binds to submit the written proposals, on the draft law adopted by the first reading, to the staff with the official letter of the person authorized to do so.

The Ministry has not submitted a WRITTEN proposal within the prescribed time period and tried to justify the proposal at the Commission's meeting by the Article 78 (2) (2) of the NA Rules of Procedure .

We believe that Paragraph 2 (2) Article 78 of the NA Rules of Procedure does not give the Ministry right to present totally new legal regulations during the Commission's discussion (including proposal of two new draft laws) before the second reading.

It is significant that without the submission of the written proposal, it is not possible to comply with the demands of Article 28 (1) of "Law on Legal Acts", which states that the body who develops the draft must attach to it the following documents when submitting to legal body.

- 1) Reasoning (base) of the legal act's adoption
- 2) reference on the absence of necessity of adopting other laws in respect of the adoption of the law, as well as the necessity or the absence of the adoption of other normative legal acts;
- 3) reference on substantial increase or reduction of expenditures and incomes of the budget of the state or local self-governing body in connection with the adoption of the legal act;
- ...
- 6) Summary of the comments and suggestions on the draft, on their acceptance or refusal, moreover the summary includes the comments and recommendations received as a result of public discussions. There has not been any public discussion on the draft amendments proposed by the Ministry.

1. The Ministry, on completing the presented law draft package with new drafts by the first reading of NA, has found that "the provisions of the

Article 65 of the NA Rules of Procedure apply to the package of draft laws as well. That is, the provisions for drafting proposals equally refer both to the draft and the draft package, and the author of the draft package may suggest any draft law to be removed from the package, complete the existing draft included in the package or the whole package with new draft". In order to defend this logic, the Ministry referred to the working order approved by the National Assembly's decision of December 16, 2016.

We find it necessary to oppose to this viewpoint by the following counterargument:

According to Article 69 (1) of "NA Rules of Procedure" Constitutional Law, the draft law is debated in the National Assembly with two readings.

According to Article 65 (2) of the NA Rules of Procedure, ... The provisions of NA Rules of Procedure apply both the draft law as well as the package of draft laws. Consequently, the package of draft laws should also be discussed in the National Assembly with two readings.

The draft package also included 8 additional draft laws, the list did not include the draft laws on amendments and supplements to the Criminal Procedure Code of RA and Administrative Procedure Code of RA (hereinafter, the Additional Drafts).

The adoption of the Additional drafts by the National Assembly of RA as a result of the second reading of the draft package, will mean that the additional drafts are discussed and adopted with one reading, which directly opposes to the imperative demand of the constitutional law.

It is significant that in the reference provided by the Government, as well as in the reference provided by the Legal Department of the National Assembly of RA, it is stated that there is no need to adopt a law or a decision of the National Assembly concerning the package of bills (Draft + 8 Draft Laws).

As for the working order adopted by the decision of the National Assembly, it cannot be contrary to the constitutional law. Such contradiction is inevitable if the working order allows adopting the draft with one reading.

1. The Ministry absolutely did not refer to the aspect of the draft about the lack of necessity to impose a fine.

In general, the Ministry's approach not to substantiate and comment on any legislative amendment to advocates' fines is problematic. Meanwhile, the author of the legislative initiative should have presented to the National Assembly a justification for the adoption of the draft, where the existing problems, proposed regulations and expected results would have been mentioned.

At least, the reference to this provision of the law shows that when submitting a draft law, the author of the legislative initiative is obliged to indicate the justification of the nature and content of the draft law. Meanwhile, in the case of the discussed amendments, the competent body has not done so, creating a legal casus and causing the socio-legal nature of the advocate community's revolt.

The legal regulation about imposing fine on advocates in the Civil Procedure Code of RA does not have justification and there is no need to adopt that legal regulation.

The courts applied judicial sanctions on 4 advocates while examining 125,500 civil cases in First Instance Court of RA, in 2016.

The courts applied judicial sanctions on 2 advocates while examining 137.399 civil cases in First Instance Court of RA, in 2017.

Summarizing the above written, we hope that the Ministry will reconsider its approach to this question and the National Assembly will not adopt the draft.

Ara Zohrabyan,

The Chairman of the Chamber of Advocates

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