

ARA ZOHRABYAN. "WHEN THE FIELD OPENS, SERIOUS ISSUES WILL ARISE" AN INTERVIEW TO IRAVABAN.NET

30.05.2016 10:09



Why not giving the opportunity to not lawyers appear in the Courts as party defenders, especially on civil matters. Recently discussions spread around this question on professional platform. The Chairman of the Chamber of Advocates Ara Zohrabyan finds that there are many obstacles for having a go at it, as also numerous are the risks of giving that opportunity to not a lawyer. According to him, anyhow, first of all will suffer the citizens, besides, the juridical corruption will deepen. Further details in the interview for iravaban.net

--Mr. Zohrabyan people who support the idea that the human rights can be defended, especially in the Court, by not a lawyer, have several arguments, I have written down the three of them. The first one is: a civil legal relation, when the citizen himself obtains his rights and obligations, consequently is the one to have the right of defending them.

The second one is: the advocacy service is more expensive, while some people don't want to turn to the office of Public Defender. The third is the issue of the qualities of provided advocacy services that we are going to return to more circumstantially. What counter arguments do you have?

- I want us to observe this question from two points of view. First, from the citizens' interest point of view, as they are to get qualified legal help. From this point of view the civil legislation, the law about Advocacy, limits the opportunities of other persons in providing paid or permanent representation. That is the citizen can turn to his neighbor and the neighbor can defend his interests. The limitation refers to the cases when the person, let us say, the lawyer or the neighbor, performs it on paid or permanent basis, i.e. as if it were a craft, in this case the legislation forbids. The proposed protocol, presented by Mister Tigran Urixanyan, has the approach allowing also not lawyers enter the field, and that can bring to serious problems. Consequently, I think that the aim of these arrangements is not the defense of the citizens' rights, but is to create an opportunity, coming up from another point of view, for a certain group to realize the representation in the Court as a kind of business. Here we can see the real problem. First they say that the judicial representation is a "monopoly state". It would have been monopoly if it would have granted only to one organization. Today we have 1722 advocates, i.e. there is a healthy competition amongst the advocates. Henceforth, the market itself tells

different prices for advocacy services for people of different social groups and the advocates, providing those services. I can't say, that today's advocacy community hasn't provided the representatives of all social groups with legal help. Let us admit, the law gives not advocates the right to act as they used to previously. Formerly everybody could act, they got a notarial license and appeared in the Court. So what is the question here, the advocates have a special status in the society, even the ECHR emphasized in some decisions, that the advocate has a special status, as he is to be a negotiator between the society and the Court, of course without the negative meaning, but a negotiator, who can present the voice of the society before the Court. The constituent should be provided with qualified legal help, as also has to keep secrecy, I'm not speaking about the person's being discreet or not, but about objective situations

and conditions. The advocate isn't allowed to call a witness and examine him on the account of the question, connected with the issue of providing legal help, meanwhile any other citizen can be summoned and asked whether this or that person has been at his place, what were you talking about, but the advocate has an immunity, he can't be summoned as a witness. The next one, the apartment of the advocate, or his office can't be searched with the purpose of obtaining informative documents or data medium. What means that on the part of secrecy advocates have privileged status. To provide qualified legal help to the constituent is also important to maintain from his best interests, the citizen is to be sure, that his representative won't betray him, won't pass to the other party interest representation and this is what the circumstances are to be like. We have the Codex of Advocate's behavior that has its own rules. Before this "monopoly" they had appealed to the Chamber of Advocates, for one advocate presented the interests of the plaintiff afterwards felt resented and passed to the party of the defendant, and there was no tool or way to take that person out of the field. I am acquainted to the point of view of some orators, whom I respect, among them are also good specialists, that aren't advocates, there are citizens having good knowledge of jurisprudence, who aren't in need of an advocate at all, of course there are people among advocates who can represent in an ill manner, but we have a system of self-regulation, where the rules of the game are fixed and keeping the way of self-cleaning the advocacy moves forward. At present to become an advocate, the person gives an examination in advocates' school, that examination provides a strong competition, and after giving the examination, studies for one year, passing

enough theoretical and professional themes, having practice, thereafter the qualification examinations in the Chamber of Advocates they get an advocate's license.

- Let us approach from a legal point of view: does the law really safeguard or undo this kind of outcome?

- It bans only in case, when the case refers to paid or regular legal help, that is on permanent basis. One more argument was quoted by our orators, that in Administrative Court there is no need of advocate's compulsory presence. Yes, they are right, but in the Administrative Court a bit differs legal regulation, the Administrative Court in comparison with civil legislation acts according to «Ex officio» condition. What does it mean? According to its post he is a judge clarifying facts. If during a civil proceeding the Court is in the role of a neutral referee, the traditional competition takes place, the Administrative Court itself is responsible to clarify the truth, besides, in administrative jurisdiction the responsibility for evidence mainly carries the administrative body. In these circumstances the citizen has hardly anything to do, on the other hand, in administrative court the interest rate also decreases, as on the other side is a state body.

- Let us talk about qualities. If now I tell you that there are advocates who realize bad service, perverse this important profession, go in for frauds, you can qualify my words as subjective claims. To avoid such a problem, let me give you some examples, lately I talked with the Chairman of the Central Court, who told me:

“Very often the advocate works with his client in a very ill manner, for example, there is one word to be said, I ask him to apply for a claim limitation, the rest I am to do, he doesn't say it, doesn't savvy, doesn't understand, I don't want to think that he works for the contrary party”.

Besides, in our SIS there are many cases against advocates, who had been accused for different issues, my colleagues and I elucidate sessions and see advocates that don't work from the best interests of their constituents”. What should be done for the advocacy community not to go towards stagnation?

- We have 1722 advocates, I can't agree that such cases are numerous, there can take place singular cases, i.e. we can't eliminate the advocate against errors. But it is a fact that the advocacy community struggles against it. What refers to the note sounded by the judges, of course, let us agree that we also have bad judges, not literate decisions or judgements. If we talk according to the facts, our systems, at least, are worth each other. Nevertheless,

every one of us in his own turn has to do his best, the justice to be realized in RA. In this sense the role of the court is also big. Of the same importance is the role of advocates. The advocate with the help of his literacy and courage can make the court system work well.

- Deputy Tigran Urikhanyan presented a plan, according to which this proposal again started to be discussed. He concluded, that in RA the average price for the service of advocate's presence in the court starts from 300 thousand RA drams, meanwhile the deputy getting the lowest salary has to pay his whole six-months' salary for the representation in the court, and the person, getting an average salary, has to pay his two or three-months' salary. If his notifications are true, according to you, aren't in fact the advocacy service charges high? By the way, the discussion of this plan has been postponed for one year.

- I have no possession of such statistics. Have myself taken part in the discussion of this plan that took place within the committee of the National Assembly, and I didn't understand from which source this data had been obtained. Today advocates provide legal help to citizens even free of charge. I don't think any advocate not to have any free of charge cases.

- Let us admit for an instance, that these legislative amendments have been accomplished and not advocates freely defend the rights of citizens. What troubles are we to get in?

- I think the field will get out of control from the constituent's rights defense point of view. We shall have cases of conflicts of interests. There will be the danger of one's secrets to be promulgated and in a legal order.

We can have another risk if the civil case court representation becomes open. Particularly, state governmental persons, including judges and prosecutors, can found their offices and take bribes in the form of legal service. We are to face a serious problem. Imagine somebody going to the judge, meanwhile he sends him to his office, where he gets the 100% guarantee, and if the advocate does such a thing his license will immediately be revoked, but the office can do it, as there are no rules of a game, it gives the guarantee, the judge satisfies and it turns out to be that there is no bribe, there is a charge against a service.

- Do you assume that the representatives of that office aren't lawyers?

- I talk about the situation if the field is opened. Any judge can have such kind of an office.

- On the other hand, many advocates today have a direct communication with judges; maybe they are former judges, prosecutors, so the risks remain.

-Certainly, we can't exclude that, but at least our bylaws give certain guarantees in this sense.

The interview by iravaban.net site

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