

**THE RESPOND OF THE RA CHAMBER OF ADVOCATES
TO THE NON-GOVERNMENTAL
ORGANIZATIONS OF THE CIVIC SOLIDARITY PLATFORM**

Dear Colleagues,

After reading your public announcement, we hereby inform the following:

The announcement is conditionally divided into two parts. In the first part you have presented your concerns in regard to the actions of the state officials of the Republic of Armenia and your call on the Armenian authorities. In the second part you have presented your concern in regard to the actions by the RA Chamber of Advocates and your call on the Chamber of Advocates.

We do not want to express any position in regard to the first part of the announcement, since the “interference” of the organizations to the process of protection of Human Rights is an expression of public control.

We are concerned about your biased, unclarified and groundless view on the RA Chamber of Advocates, which artificially equalizes the Chamber of Advocates with the state officials.

You have particularly mentioned in your announcement that the Chairman and the Board members of the RA Chamber of Advocates have made biased speeches.

We urge to inform you that the Chairman or the Board Members of the RA Chamber of Advocates have not given any assessments in their speeches to the behaviour of any advocate participating in the criminal cases mentioned by you, from the view of violations of the Code of Conduct of Advocates. In order to make such a responsible statement one shall at least have reliable factual bases. Therefore, we would kindly ask you, as organizations specialized in their work, to publish the statements by the Chairman and Board Members of the RA Chamber of Advocates (as a matter of fact, without summarizing the thoughts therein), which contain "biased" views on the violation by the advocate of the Code of Conduct of Advocates. We are positive that such opinion of yours is based on one-sided "information".

You have called on the RA Chamber of Advocates to refrain from initiating disciplinary proceedings and imposing any disciplinary measures towards the advocates. As per your call, such proceedings and measures can be grounded only in the cases when they refer to the **APPARENT** violations of the Law “On Advocacy” and the Code of Conduct of Advocates.

As to this call we would like to bring your attention to the following legal regulations:

According to Clause 1 of the 1st Principle of Recommendation No. R(2000)21 of the Committee of Ministers to Member States “On the Freedom of Exercise of the Profession of Lawyer” dated 25 October, 2000, *all necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.*

According to Clause 4 of the same principle *lawyers should not suffer or be*

threatened with any sanctions or pressure when acting in accordance with their professional standards.

*According to Part 4 of the Article 39.1 of the RA Law “On Advocacy” disciplinary proceeding is initiated based on **EVIDENT** presence of elements of a violation of the requirements stipulated by the following law and the Code of Conduct of Advocates*

We have to firstly note that initiating a disciplinary proceeding against the advocate does not yet indicate that the advocate has violated the RA Law “On Advocacy” or the Code of Conduct of Advocates. Furthermore, we hereby inform that the court sanction itself is considered as both a reason and a basis for initiating a disciplinary proceeding. In cases of court sanctions the Chairman of the RA Chamber of Advocate is obliged to initiate a disciplinary proceeding. Initiating a proceeding itself, rather than imposing disciplinary measures, is a clear requirement under the law. Being guided by the principle of the rule of law the Chairman of the Chamber of Advocates is obliged to initiate a disciplinary proceeding, which does not infer that the advocate is being brought to disciplinary liability.

As per the statistics, most of the proceedings initiated based on the motions by citizens, state officials and courts have not eventually lead to disciplinary measures, since the board, being the body authorized to consider the disciplinary issues, has dismissed the disciplinary proceeding on the basis of not discovering any violation. Therefore, one should segregate the stages of initiating the disciplinary proceeding and the considering the issue of imposing disciplinary measures. These are two separate processes, being conducted by two different authorities, containing different procedures and being regulated by different legal norms.

Whilst addressing the issue of calling the advocate to disciplinary liability, we find it noteworthy to mention that the issue of imposing disciplinary measures towards the advocate is considered by the Board of the RA Chamber of Advocates, consisting of 12 members. The Chairman of the RA Chamber of Advocates does not participate in the discussion of such issues. The Board of the RA Chamber of Advocates may impose disciplinary measures towards the advocate only in the cases, **when there is a violation of the Code of Conduct of Advocates**. If there is no violation in the actions of the advocate, the disciplinary proceeding shall be dismissed.

Your call on the RA Chamber of Advocates on refraining from initiating disciplinary proceedings and imposing any disciplinary measures towards the advocates is not justified and may be viewed as inference to the activities of the independent and self-governed Chamber of Advocates of the RA.

Moreover, the limitation highlighted in your call as to the fact that such proceedings and measures may be justified only in the cases when they refer to the APPARENT violations of the RA Law “On Advocacy” and Code of Conduct of Advocates, is not justified, as well. According to Part 1 of the Article 39 of the RA Law “On Advocacy” the advocate bears disciplinary liability for violations of the following law and the Code of Conduct of the Advocates...According to Part 5 of the Article 39.9 of the same law the type of the sanction which provides for termination of the license to exercise advocacy may be imposed by the Board of the Chamber of Advocates only in the cases where a serious APPARENT disciplinary violation was willfully committed. As envisaged in here, the legislators

have provided the APPARENT element only for the case of imposing the sanction of termination of the license.

With your call-suggestion you are willing to narrow the scope of authorities of the Board and see the opportunity for bringing to liability only in the cases of APPARENT violations.

At the same time we kindly ask you to examine the previous decisions of the RA Chamber of Advocates, the contents thereto, the formed practice and the statistics which clarify that in making its decisions the Board of the Chamber of Advocates has been guided by the rule of law and respect for the fundamental rights and freedoms, RA Constitution, European Convention of Human Rights, as well as requirements of other international norms in regard to fundamental rights, whilst taking into account the case law of the European Court of Human Rights regarding to the advocate's behaviour.

Recommendation No. R(2000)21 of the Committee of Ministers to Member States "On the Freedom of Exercise of the Profession of Lawyer" dated 25 October, 2000 and the RA internal legislation protect the RA Chamber of Advocates from groundless pressures, the independence of which institution is directly proportionate to the independence of the advocates. And it is not essential whether such groundless pressure is made by the state official or the public organization.

Based on the above mentioned, we hereby call on you to be objective and comprehensive in making your further assessments.

Meanwhile,

-we kindly invite you to visit Armenia and examine the activities of the Board of the Chamber of Advocates on site. Moreover, we are ready to organize a joint event, for instance a conference on the worrisome issues.

- we anticipate that you will publish the speeches by the Chairman and Board Members of the RA Chamber of Advocates, which have been viewed by you as biased, and which have appeared as bases for your assessments.

P.S. attached to this letter we hereby present a reference where the actions taken by the RA Chamber of Advocates in regard to the incidents on the mentioned criminal cases have been summarized.

Sincerely,

Ara Zohrabyan
Chairman of the Chamber of Advocates
Of the Republic of Armenia