AN OPEN LETTER TO THE MINISTRY OF JUSTICE OF ARMENIA AND THE CHAMBER OF ADVOCATES: WE STAND CONCERNED

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It appears that something rather peculiar is afoot at the Justice Ministry. While the power to discipline attorneys is common in a number of jurisdictions, the manner of its proposed implementation in the Armenian judicial system has drawn not only our attention but our concerned circumspection. We urge the Justice Minister to tread carefully here—lest he disrobe yet another pillar of the judiciary's waning independence.

The whole thing appears rather innocuous at first glance: the Armenian court will be afforded the ability to sanction attorneys practicing before it—and that, to the order of 100,000 Armenian Drams ($200 Dollars). Of course, we understand this power is to be applied against prosecutors as well as defense counsel. Yet, we doubt this is true and, frankly, question even its administrative feasibility: if such sanctioning power was actually exercised by Armenian judges against both defense counsel and prosecutors, even anecdotal reports suggest that there would be an immediate backlog of sanctions proceedings for prosecutorial misconduct, dilatory behavior and consistent disregard of discovery obligations in numerous cases.

The more likely scenario is prosecutors will not be sanctioned, but defense counsel will be—and readily so. The sanctions regime will not curb prosecutorial misconduct but instead curb the zealous advocacy of defense counsel on behalf of the accused, especially in politically-motivated prosecutions.

But this is not even half the problem. The proposed contempt regime overlooks an essential element in procedural application with real, substantive consequences: the institution of the "contempt hearing." Generally, in criminal cases pending in seasoned judicial systems, the court would reference possible contempt but defer the "contempt hearing" of defense counsel until after the criminal case is concluded so as not to disrupt a defendant's right to counsel of choice and not distract defense counsel from zealously representing the accused in court. This is not simply procedural nicety—it is necessary to protect the rights of the accused during criminal legal proceedings.

A "contempt hearing"—conducted by a neutral magistrate, outside and after the underlying case—is also crucial to protect the due process rights of the attorney. The disciplining of a defense lawyer by an Armenian court, while a criminal case is ongoing, is not only inherently unjust and unfair to the defendant but may also be a violation of the attorney's due process rights where it results in disciplinary action without a hearing on the merits and with the offended judge serving as both the accuser and decider.

The power to discipline an attorney should vest with the Chamber of Advocates—complete with "notice and opportunity to be heard"—not with the Armenian judge during a pending criminal proceeding. The court may "notice" the attorney and refer the matter to the Chamber of Advocates for disciplinary action—which would be conducted after and outside the pending criminal matter and with due process safeguards. Such would not only protect the rights of the criminal defendant and the targeted attorney, but it would also allow for consistency in disciplinary jurisprudence.

These are likely not the objectives of the present proposal. This proposal is a marked step toward the further subservience of judicial institutions to an ever-reaching ruling establishment.

We call on the Justice Minister to bear in mind that, while the general public may not find interest in these seemingly innocuous proposals, we do. And we caution that he act to safeguard the very judicial institutions the ministry serves rather than the political agendas of the Republic's governing elites.

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