

RIGHT TO ADVOCATE AND BE ADVOCATED

Some evidence on violence of right to advocate

1. Provision 15.1 of Advocate law of Mongolia states that it “shall be prohibited to impose any pressure or interfere to, impede, claim any guarantee and threaten an advocate while he/ she is performing professional duties ”.
2. However, Advocate Law requires “A person to perform advocate duties to be necessarily a member of NGO, Mongolian Advocates Association”. It also requires paying membership fees on monthly basis.
3. In case if an advocate fails to pay membership fee his/her advocate special license shall be revoked as per order of Minister of Justice and Domestic Affairs.
4. Any advocate after graduating from law school shall pass advocates professional exam, and shall an exam score be sufficient the person obtains a right to advocate by acquiring special license.
5. Although there is a legal regulation in Mongolia to suspend a special license of an advocate who acts improperly including violation of advocates code of conduct, involvement in corruption, not meeting client’s needs, in some cases rent seeking by serving the both parties, the regulation is never enforced.
6. However, referring to failure to pay membership fee, the MAA NGO, in collaboration with government agencies exercises a considerable deal of pressure on an advocate by revoking a license and restricting a right and freedom of advocate to be employed according to chosen profession, knowledge and experience.
7. Although the issue was brought up to the attention of court of any level in Mongolia, it is yet impossible to enjoy right to be protected and free from any form of discrimination and pressure that causes the discrimination as per provision 7 of the Universal Declaration of Human Right.

Conflict of jurisdiction

- In provision 5.3 of the Law on NGO it is stated that “it shall be prohibited to force to join an NGO”. In 20.2 of the Universal Declaration of Human Right¹ also prohibits “any person to forcefully joining NGO”.
- In the Constitution of Mongolia it is provided that “a citizen of Mongolia shall enjoy the following guaranteed rights and freedom”. Furthermore, 16.10 of the Constitution states that “...shall have a right to voluntarily unite”.
- In provision 8 of the UDHR it is stated that “shall rights and freedoms stipulated in the Constitution and other laws be violated, any person shall have a right to reestablish the rights through authorized national court”.
- In 10.2 of the Constitution of Mongolia it is provided that “Mongolia shall duly fulfill the responsibilities stated in international treaties”. Furthermore, in provision 3 it is stated that “With ratification of international treaty that Mongolia is a party to, or with entering into force of the law on joining the treaty it shall be enforced as nay domestic legislation”.

¹ Mongolia joined it in 1969. In 2.2 of Advocate Law it is stated that “if it is otherwise stated in international treaties that Mongolia is a party to, provisions of the international treaty shall be followed”.

- In 26 of the Vienna Convention it is stated that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”. In 27 of the Convention it is stated that “a party may not invoke the provisions of its internal law as justification of its failure to perform a treaty”. These provisions are violated.

Case 2.

Attorney G is the one who handles a corruption case of a former MP O. Attorney G has filed a complaint with police on A, who is a Chief of division of Anti-corruption agency, for him gathering a false documentation against O. Learning about the situation, A had forcefully brought G to his place, brutally raping her several times from 4 a.m. to 4 p.m.

Attorney G has filed a complaint with police. She also mentioned that Anti-corruption agency investigator has been forcing her to deny the case. A perception of “immoral woman” is floating around G’s parents, friends and general public. Moreover, the MAA, NGO, which is to protect its members, is blaming her of “harming attorney’s reputation”.

Problems of jurisdiction

- Every person shall be immune
- Shall be equal before the law
- Be free from any form of discrimination
- Attorney shall be independent and secure

Evidence of violation of the right to be advocated

A right to self-advocate and employ an advocate to protect own rights is not guaranteed. For example,

- For imprisoned or suspended person to see his/her attorney it is necessary for the latter to obtain a special permission from the MAA.
- However, there are about 100 attorneys who lost their attorney rights because of failure to pay membership fee. They are not in a position to obtain above permission.
- Therefore, citizens fail to enjoy their right to receive services of attorney.
- Although attorneys shall serve for free twice in a year in Mongolia, it is never fulfilled in the country and poor, who is almost the half of the population is far from enjoying these rights.
- More than 200 people, victims of July 1, 2009 riot, were not able to receive decent advocacy services, especially children and women were forced to give a testimony without attorneys and custodians.

Problems of jurisdiction

- In provision 11 of the UDHR “any suspect of criminal case shall be accorded advocacy rights,...., and go through fair and open trial”.

Recommendation

- Mongolia shall perform in fair manner a responsibilities stipulated in international treaties that it is a party to.
- Domestic legislation shall be in compliance with international treaties
- Shall admit and perform in a due manner that international treaties prevail domestic legislation
- Shall fully enable citizens to protect their right in court in case of violation of rights and freedoms stipulated by international treaties.

Written by: Center for Citizens' Alliance

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