



Opinion of NIHR on Draft Law on Issuing the Legal Practice Law

(Prepared in light of the draft law submitted by Shura Council)

Introduction:

In appreciation of the efforts exerted by the Honorable Council of Representatives in relation to the issues of Human Rights, considering it as the Legislative Institution tasked with protecting the rights and public freedoms; and with all due respect to the considerations sought by the draft Law on issuing the Legal Practice Law (prepared in light of the draft law submitted by the Legislative and Legal Affairs Committee in the Shura Council Shura Council); based upon the request of the Legislative and Legal Affairs Committee in the Shura Council, the National Institution for Human Rights hereby refers to you its opinions on the draft law taking into account the relevant provisions of the Constitution, and international treaties and conventions on human rights.

As the draft law in question consists of (79) articles, dealing in their entirety with the regulation of the legal practice in Kingdom of Bahrain by defining the legal practice, setting up the conditions for registration in the legal profession register, organizing the conditions and provisions that shall be fulfilled by foreign law firms to operate within the kingdom, organizing the register of the lawyers admitted to pleading before the court of Cassation and the Constitutional court, organizing lawyers rights, duties and disciplinary responsibilities and determining their fees and legal aid as well as the penalties determined upon violation of the provisions thereof.

Whereas, the mandate determined for NIHR pursuant to the provisions of Law No. (26) No. 2014 on establishing the National Institution for Human Rights; especially, paragraph (b) of article (12), stipulates that NIHR:

"Study legislations and regulations that fall within the areas of human rights, recommend amendments as it deems appropriate in this regard, and ensure they are appropriate and consistent with the Kingdom of Bahrain's international obligations in the field of human rights. The NIHR may recommend enacting new legislations related to human rights".

Thereupon, the NIHR will limit its opinions regarding the draft law the subject matter of opinion to the legal stipulations deemed to relate and have an impact on fundamental human freedoms and rights; especially articles no. (6), (37), (38), (39), (42) and (65). As for the other articles, the NIHR hereby makes reference – in terms of the formal notes (language and legal register) and subject matter (content) – to the honorable Government Memorandum Opinion, and the and that of the Legislation and Legal Opinion Commission attached to the draft law for consideration as deemed satisfactory for your honorable Council in this regard.

This is detailed as follows:

Article (6):

Stipulation as mentioned in the draft law:

It isn't allowed to combine the legal practice and the following:

1. Speaker of the Shura Council and Council of Representatives or Municipal Councils.
2. Ministerial position.
3. Holding public positions in the State or appointment in any of the public entities, institutions or companies or employment at the banks or associations and individuals with exception of exemption by virtue of a Royal Decree issued based on recommendation by the Council of Ministers.
4. Engaging in the business activity.
5. Holding the position of chairman or member to board of directors in shareholding companies or director at a limited liability companies,

joint liability and partnership companies.

NIHR's Opinion:

The National Institution finds that the above article has determined the legal cases where it isn't allowed to combine practicing the legal profession and some other work. This means that there is the possibility of conflict of interest between the profession and the other work in closely related areas. However, it is noted that paragraph (1) of the same article states that it isn't allowed to combine the legal profession and the position of the speaker of the Shura Council and Council of Representatives or municipality councils, while the reason for the prohibition extends to include members of these councils. This is especially the case where the speaker of the Shura Council and the chairpersons of municipal councils like the rest of the members of such councils but have are later elected as speakers.

On the other hand, in accordance with the law on establishing the National Institution of Human Rights, it is a public institution in the State tasked with enhancing, developing and protecting the human rights in Kingdom of Bahrain. In addition, its law allowed the members of Council of Commissioners appointed by a royal order can be those who practice the legal profession. Consequently, pursuant to provisions of paragraph no. (3) of the article subject matter of the opinion; it is not allowed to combine such profession and this position:

Therefore, the NIHR finds that it is preferred that members of the Shura Council, Council of Representatives and members of municipality councils should be treated equally regarding the inadmissibility of combining the legal profession and these positions because this is the very purpose sought by the draft law.

In addition, the NIHR believes it is preferable to add the word (royal order or) before the phrase (royal decreed based upon recommendation from the Council of Ministers), so that this will include exemption of all lawyers appointed by virtue of a royal order or royal decree in authorities or public institutions within the State.

Article (37):

Stipulation as mentioned in the draft law:

The lawyer shall be entitled to review the lawsuits and judicial papers and have access to the data related to the lawsuit undertaken by him.
The courts, prosecutions, police departments and other entities, before which the lawyer practices his profession, shall provide him with all facilities required for performing his duty and enable him to review the papers, have access to the data and attend the investigation with his client in accordance with the law. His request may not be rejected without a legal reason.
All deliberations in the session shall be minuted.

NIHR's Opinions:

The National Institution of Human Right believes the above mentioned article raises a critical issue in the international law of human rights; especially the right of everyone to a fair trial, including his right to communicate with the outside world, such as seeking the assistance of a lawyer to be chosen for protecting his rights and to assist him in defending the same. This is a basic right to be made available from collecting the inferences, through the stage of the initial investigation until the final and decisive judgment by the competent court; and this extends even to the period of executing the determined penalty.

Whereas, the provisions of the decree-by-law No. (46) Of 2002 on issuing the Code of Criminal Procedures and amendments thereof have established

the right of the accused at the time of arrest to communicate with the outside world; especially article no. (61), which stipulates:

" Every person who is arrested shall be informed of the reasons for his arrest. He shall have the right to contact any of his relatives to inform him of what has happened and to seek the aid of a lawyer".

Whereas, the right to communicate with the outside world is absolute, abstract and not restricted by the type of crime subject matter of the arrest; it follows therefore that this right is uncompromised for the arrested in all cases.

Thereupon, the National Institution for Human Rights finds that the legal formulation of the article subject matter of opinion shall be made in such way to guarantee that the individual whichever his legal position, without hindering him by whatsoever entity to communicate with the outside world, such as seeking the assistance of a lawyer to be chosen by him to protect his rights and to assist in defending him without prejudice to provisions of stipulation of article No. (61) of provisions of Decree-by-Law No. (46) of 2002 on issuing the Criminal Procedures Law and amendments thereof in line with the related international convention of human rights.

Article (38):

Stipulation as mentioned in the draft law:

The lawyer permitted to visit a detainee in the public prisons shall be entitled to visit him and meet with him alone in a decent place inside the prison.

NIHR's Opinion:

The National Institution for Human Rights finds that the essence of the above article is closely connected to the preceding article, whereby the individual shall be enabled to communicate with the outside world; such as seeking the assistance of a lawyer to be chosen by him to protect his rights and to assist in defending him. This is an original right that shall be provided beginning from collecting the inferences reaching to the stage of the initial investigation, until a final decisive judgment is passed by the competent court. However, such right extends to the period of execution of the determined penalty and such consultation and communication with the lawyers shall be made without delay, hindrance or control¹, and without imposing any restrictions hinders the individual to use such right.

Therefore, the word (permitted) mentioned in the above article may lead to violation of the right of those persons whose freedom is restricted to meet their lawyers by the authority that grants the permission due to the possibility of arbitrariness in failure to grant such permission or delay in granting it. Such issue may cause delay or hindrance in enjoying the right resulting in violation of the right of the individual to seeking the assistance of a lawyer to be chosen by him to protect his rights and assist in defending such rights.

¹ Refer to; comment No. (32) of Human Rights Committee entrusted with interpreting the provisions of the International Convent on Civil and Political Rights that Kingdom of Bahrain became party thereof according to Law No. (56) of 2006 – Document No. (CCPR/C/GC/32).

Therefore, NIHR hereby finds that it is preferred to remove the word (permitted) mentioned in the above article and reformulating it in compliance with relevant international human rightstreatiesand convention.

Article (39):

Stipulation as mentioned in the draft law:

The lawyer whether a litigant or an attorney in a lawsuit shall be entitled to authorize another lawyer in the attendance, pleadings or other litigation procedures under his responsibility without private POA as long as there is nothing hinders this in the POA.

NIHR's Opinion:

The National Institution for Human Rights hereby finds that the stipulation of the above article allows the lawyer to authorize another lawyer on his behalf in the attendance, pleadings or the other litigation procedures, whether the former is original litigant or attorney in the judicial lawsuit. However, this authorization in its current form and as applicable in practice may be subject to abuse if the other authorized lawyer deals with in bad faith or if he uses such authorization without the knowledge and approval of the lawyer himself. Consequently, the rights and interests of the parties to the lawsuit will be compromised.

Therefore, the NIHR hereby finds that it is preferable that the authorization mentioned in the above article shall be in writing, whatsoever the cogency thereof to be submitted to the competent court to protect and maintain the interest of the all parties to the judicial lawsuit in agreement with the just

trial guarantee and as established by the related international convention for human rights.

Article (42):

Stipulation as mentioned in the draft law:

The lawyer shall offer judicial assistance for citizens and others who are financially unable to pay legal fees when delegated by the court and he shall perform his duty in the same diligence to be exerted if he is authorized.

In this case, he may not abstain from the defense unless he has been granted permission from the court before which he undertakes the defense. He shall continue until his withdrawal request is approved and a substitute lawyer is appointed.

NIHR's opinion:

The National Institution for Human Rights hereby finds that while article no. (20) of the Constitution of Kingdom of Bahrain amended by article no. (f) Thereof expressly stipulates "the right to litigation shall be guaranteed in accordance with the law". In addition, such right, which is established legislatively, may not involve discrimination between citizens and others, because it is a right that shall be enjoyed by each individual existing within the judicial jurisdiction of the State. Therefore, it was unjustified to correct the phrase (*citizens and others who are financially unable*) to refer to parties to the lawsuit as mentioned in the above article. In addition, the phrase (*and others*) is as denotation that has an unknown and unspecified meaning.

Therefore, the NIHR hereby finds that in line with the sound legal formation it is preferred to replace the phrase (*citizens and others who are*

financially unable) by *(the litigants)* and reformulate the whole article taking into account the aforementioned considerations.

Article (65):

Stipulation as mentioned in the draft law:

Each lawyer who violates the provisions of this law or of his profession duties or performs work that affects or degrades the ethics and traditions of the profession shall be punished by any of the following penalties:

1. Warning.
2. Reprimand
3. Suspension from practicing the profession for period not more than two years.
4. Disparment

NIHR's Opinion:

The National Institution for Human Rights finds that while it is established by virtue of legislation, justice and administrative law jurisprudence; especially in field of the disciplinary accountability, it is necessary that the determined disciplinary penalties shall be graded in terms of severity thereof considering its principle agrees with the human rights. This approach is stipulated in the provisions of the Civil Service Bureau issued by decree-by-law No. (48) of 2010; especially, article No. (23) thereof which begins with the oral warning followed by the written warning and then suspension from the work with deduction of the salary for period not more than one month during the year and not more than ten days per each time reaching to the dismissal from the service. The article subject matter of opinion made the (blaming penalty) more severe shall the (warning) penalty and this contradicts with the principle represented in the necessity of grading in the disciplinary penalties in terms of severity thereof. In addition, it is difficult to implement and prove the penalty of (blaming) because it is wide and undetermined.

Thereupon, the NIHR hereby finds that it is preferred in agreement with the approach applicable in the Bahraini Legal System; especially in field of the disciplinary accountability to replace both penalties of (warning) and (reprimand) with (oral warning) and (written warning) mentioned in the above article considering the formulation of the article entirely taking into account the above mentioned considerations.