

## CRITICISM OF THE LAW ON FREE LEGAL AID IN MONTENEGRO

("Official Gazette of Montenegro", no. 020/11 from 15 April 2011, no. 020/15 from 24 April 2015)

- Representation in the administrative procedures should be included in the framework of free legal aid (Article 2) because people in the poor financial state are now deprived of free legal aid in proceedings where their eligibility to achieve many rights is determined – such as social protection, the right to pension and disability insurance, work-related rights – until the stage of an administrative dispute is reached, when it may be already too late for effective protection.<sup>1</sup>
- Victims of torture, ill-treatment or discrimination by public officials are not provided with free legal aid if they have property, although it should be in the interest of the State to promote impartial investigation and prosecution of all allegations of unlawful conduct of its officials. Particularly unfair is that, on the other hand, free legal aid is guaranteed to the police officer against whom the procedure is being conducted for "use of coercive means" (Law on Internal Affairs, Official Gazette of Montenegro no. 044/12, 036/13 and 001/15, Art 60, § 2).
- The provision stipulating that the right to free legal aid will be available to a person who owns a passenger vehicle up to the value of four average monthly income in Montenegro (about EUR 3,000), as established by the estimation of the competent tax authority (Article 15) is excessively limiting, given the real cost of the cheapest vehicles on the market.
- Persons authorized to provide free legal aid besides lawyers from the list of the Bar Association of Montenegro, as defined in Article 30, should also be non-governmental organizations dealing with human rights, trade unions, political parties, university legal clinics and other entities that may have necessary expertise and already provide legal assistance.<sup>2</sup>

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<sup>1</sup> Unlike the Law on Free Legal Aid of the Republic of Croatia (OG 62/08), which clearly states that it includes "representation in administrative matters" and "drafting documents before administrative bodies and legal entities exercising public authority", the law of Montenegro under the term "Preparation of pleadings" (Article 23) does not include the preparation of submissions in the administrative procedure, as it is explicitly stated that "a pleadings" means preparation of a complaint, but not an objection, which is a remedy in the administrative procedure.

<sup>2</sup> The Law on Free Legal Aid of the Republic of Croatia allows both authorized associations of citizens and university clinics to provide free legal aid, op. cit. (Article 9).