

Dear Mr. Vujanović,

We turned to you with the Initiative to pardon citizens of Beranselo who were sentenced to fees and for six of them who are now sentenced to prison.

We received the answer from Mr. Dragutin Božović, adviser of your Secretary General, where he informs us that there is no legal basis to pardon these citizens because “those are penalties for offences and not criminal prisoners”. In support of this attitude, Mr. Božović quotes relevant Article 2, and several more articles of Pardon Law, that are not related to this issue.

Under Article 2 of the Pardon Law “the pardon could be given to particular person who was given criminal sanction for criminal or other punishable offence defined by the laws of Montenegro”. We think that legislator under “other punishable offence” clearly wanted to add violation, considering that:

- Beside criminal offences, other offence except violation in Montenegro doesn't exist;
- Sentences for criminal offences, like sentences for violation, like in case of Beranselo citizens, are prison and fines.

Rule that fine, and especially penalty of deprivation of liberty, when imposed in offence proceedings, because of their nature they represent “criminal sanction” and they require to be decided in the same proceeding where it is decided about criminal offences, that contains all guaranties of fairness and is conducted by independent court, it was determined by European court for human rights (from Engel and others against Netherlands, 1976 to Maresti against Croatia , 2009). As Montenegro, contrary to requests of European convention on human rights, still insists on jurisdiction of dependent authorities for offences and offences that lead to serious fines and prison, in this case it is an additional reason to release Beranselo citizens from responsibility.

About the same nature of fines and prison that are imposed in criminal and offence procedures witnesses the Criminal Code of Montenegro, Article 51 contains the rule about including of imprisonment and fines that someone paid or served in sentence imposed for criminal offence.

Finally, we believe that you are familiar to Latin maxim from Justinian Digest, that represents foundation for European and Montenegrin legal tradition, that says *Quando licet id quod maius, videtur et licere id quod minus*.

We think that it is unfair interpretation if president of Montenegro would give amnesty to people for serious criminal offences like murder, organized criminal and corruption and can't give pardon to people who commit the violation, which is less socially dangerous than criminal offence. We remind you that Beranselo citizens by “obstructing of officials in performing of their duties” were actually defending the legal system of this country.

Beside that, please note that in the Initiative we requested from you to invest your personal authority and provide legal solution to the issue of illegal dumping on Vasove vode, that caused contentious situation

between citizens and Public Utility Company and Police, which protected the Company. In the answer of your Secretary General there is not a word about that.

Therefore, bearing in mind that it has been made an apparent injustice to citizens who were defending their right to live in healthy environment, we insist once more to analyze legal basis of the initiative for pardon, because there is possibility that innocent people are brought to serve the sentence which would be an irreparable damage for them and for the society in general.

With hope that you will recognize the necessity of this reaction and seriousness of situation,

Yours sincerely,

Aleksandar Perović, director