

Bar Association of Montenegro

81000 Podgorica, Bratstva i jedinstva St., no. 7

No: 38/14

Podgorica 11 May 2015

Deputy Disciplinary Counsel of the Bar Association of Montenegro, attorney Nikola Medojević, acting on the basis of Art. 29, para 3 of the Statute of the Bar Association of Montenegro, Art. 271, para 1 of the Criminal Procedure Code (CPC) and Art. 97 of the Statute of the Bar Association of Montenegro, in the case against attorney Boško Laličić from Podgorica, upon a report filed on 17 December 2014 by Executive Director of NGO Women's Safe House Ljiljana Raičević, Executive Director of NGO Women's Rights Centre Maja Raičević and Executive Director of NGO Human Rights Action Tea Gorjanc Prelević, adopts

DECISION

rejecting the report of 17 December 2014 against attorney Boško Laličić from Podgorica as unfounded, pursuant to Art. 271, para 1 of the CPC, as the actions of the attorney contain no elements of disciplinary responsibility

REASONING

Persons who filed the complaint, which was treated as a disciplinary report, principally stated that attorney Boško Laličić had failed to act professionally as duty counsel for foreign national Svetlana Čabotarenko, who was tried *in absentia* in the proceedings before the Basic Court in Podgorica K.br. 199/2014. For that reason, the defendant was not provided adequate defence, in accordance with the standards of a fair trial, which imply effective defence, not theoretical and illusory one. The complaint further states that during the proceedings the appointed counsel failed to suggest presentation of any evidence or question any evidence against his client, while in the closing arguments he only stated "that he leaves it to the Court to assess the adoption of a lawful decision"; also, that he failed to appeal the first instance decision imposing a suspended sentence, while in response to the prosecutors' appeal he laconically stated that he sought "justice and legality". Finally, it was concluded that the attorney showed apparent unwillingness to defend his client in any way, while, on the other hand, showing apparent readiness to take formal minimum action to ensure the payment of his expenses from the state budget.

Along with the copies of court decisions, the complaints also submitted their analysis of the procedure in question "which contains context of the entire case and the fact that the defendant was convicted of perjury in an investigation in which she had testified as a victim of forced prostitution and human trafficking".

In accordance with Art. 95 of the Statute of the Bar Association of Montenegro, Disciplinary Counsel of the Bar Association requested the attorney to provide his statement on the matter. In the reply of 20 December 2014 submitted to the Bar Association via electronic mail, he challenged allegations in the complaint stating the following: "This is not and cannot be a report. There is no material or formal legal basis. Therefore, essentially, they are nonsense, of course".

After considering allegations in the report and after an insight into submitted documents, Disciplinary Counsel found no grounds for initiating disciplinary proceedings against attorney Boško Laličić, as his actions contained no elements of disciplinary responsibility. Also, it has been taken into consideration that ensuring effective defence is the obligation of the court, which, in line with the law, observes that duty *ex officio* and which did not find that the guaranteed right to defence was brought into question in the mentioned proceedings. Furthermore, attorney Laličić in the proceedings in question, as well as any other attorney in any other proceedings, by nature of his vocation and according to his professional skills and abilities that are his recommendation for further engagement, certainly is entitled to own assessment of the specific situation and choice of legal remedies and actions to be taken or not taken in order to defend the interests of a party he represents.

Even under the assumption of having different views or an opinion contrary to that of the acting attorney, which is often the case among bar association members, neither the Bar authorities nor Disciplinary Counsel are competent, as a supervising authority, to evaluate **appropriateness** of taking or not taking individual actions in a number of cases in which attorneys act on a daily basis before courts. This, in principle, applies equally - from banal small claims up to sensitive cases such as the one in question, whose respectable analysis, with a dominant focus on specific actions of the court, was submitted by complainants together with the complaint.

For the above reasons, according to the cited regulations, it has been decided as in the disposition of the decision.

Deputy Disciplinary Counsel of the Bar Association of Montenegro

Attorney Nikola Medojević