

PRESIDENT OF MONTENEGRO

Mr. Filip Vujanovic

CC: MINISTRY OF JUSTICE

Mr. Miras Radovic, Minister

Podgorica, 7 July 2010

Subject: letter of support to Pardon Attorney Budislav Minic, from Kolasin, finally sentenced to imprisonment of four months for the criminal offense of Embezzlement of Art. 420, par. 2, in relation to paragraph 1 CC of Montenegro

Dear Mr. Vujanovic,

family of lawyer Budislav Minic, from Kolasin, finally sentenced by the Judgement of the Higher Court in Bijelo Polje, Criminal appeal No. 102/09 of 26 August 2009, to four months in prison for the crime of Embezzlement art. 420, par. 2, in relation to paragraph 1 CC of Montenegro, submitted to you two requests for pardon, on 6 and 20 February this year, with highlighted particularly demanding family responsibilities of Mr. Minić.

Mr Minic submitted an application to the European Court of Human Rights 26 April 2010 due to violation of the right to a fair trial, guaranteed by Article 6, par. 1 and 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (European Convention on Human Rights) and Article 32 of the Constitution of Montenegro.

Mr Minic requested from the European Court to determine a temporary measure that would require from Montenegro to postpone the execution of the sentence until the European Court of Human Rights decides on the application, to avoid irreversible harmful consequences for Mr. Minić and his family, especially his mother and five children who directly depend on his financial and physical help. We also wish to remind that Mr. Minic is a respected lawyer and longtime activist in the projects for improvement of democracy and human rights, thus the execution of this problematic sentence would have broader negative effect on the political and civil freedoms in Montenegro.

The letter with the same arguments we submitted to you we will also submit to the European Court of Human Rights in the form of support to the request of Mr. Minić for determination of temporary measure.

On the basis of the records of criminal case in which Mr. Minic was finally sentenced, we believe that there are serious reasons to doubt the professional and conscientious treatment of experts and judges in this case and we find that the application submitted by Mr Minic to the European Court of Human Rights in Strasbourg has justified reasons for success, primarily for the following reasons:

- Main evidence on which the conviction of the accused Mr Minić is based upon for embezzlement of an amount of 7191.00 Deutsche Marks (DM), ie. the difference between the value of computer equipment donated by the Government of Germany and the actual value of the equipment, is finding of a financial expert Mr. Ilija Bubanja, who was asked by the court in 2007 to estimate the value that the computer equipment, according to the court register, had in year 2000. The findings of the expert show that he obviously did not possess the appropriate knowledge for the expertise of computer equipment, as the drive, CD-ROM "LG52xMAX", being always only a part of the computer, which was possible to check on the internet, Mr. Bubanja treated as a label of the computer "processor"; which he then assessed to be worth 1,000.00 DM . On the basis of this assessment only, it was concluded that the defendant embezzled amount of DM 3750.00. We are familiar with the written confession of Mr. Bubanja about this serious error and other flaws in his expertise (the use of the alleged price list of "ELTA" company from Serbia which was never engaged in distribution of computer equipment, issuing a confirmation of that afterwards), and the fact that during the expertise he did not directly assess the equipment, but the "inaccurate and incomplete information he received from the court", which is why he signed the agreement to explain his mistakes in the new proceeding in court;

- Even if the embezzlement did happen, the government of Germany would be the only one damaged by this, not the founder of the "Ozon" Radio, LLC "Info-kol" from Kolasin. Also, at the time the action in dispute took place, the accused Mr Minic was not a director of the above mentioned company, although it is stated so in the court verdict. However, the Government of Germany has never initiated any action against Mr. Minić or "Ozon" radio, i.e. LLC "Info-kol", apparently accepting the report on the realization of donation as indisputable;

- The accused did not have the opportunity to properly discuss the facts relevant in deciding on the property claim. That decision was made by the Higher Court in Bijelo Polje, which is a violation of Art. 6 of the European Convention on Human Rights.

We are informing you that the Bar Association also acted on this case and that the President of the Bar Association in a letter to the President of the Higher Court on 30 November 2009 assessed that "lawyer Minic is not convicted on the basis of any direct evidence, while the conducted indirect evidence is far from excluding any suspicion in the commission of criminal act."

Please note that Mr. Minic filed a request 24 April 2010 for retrial on convincing new evidence and new facts.

At the same time Minic, consistently acting in accordance with, in our opinion, a reasonable suspicion that the competent judges, prosecutor and experts did not act conscientiously and professionally in this case, initiated a trial by filing a total of two criminal charges, on 5 February 2010 and 21 April 2010, against 11 judicial officials, on which has not yet been decided. One criminal complaint was dismissed with superficial explanation, and Mr Minic himself took over the prosecution.

We will follow these procedures, expecting the investigation to be carried out professionally in the interests of achieving the principle of the rule of law. We expect the outcome of the investigation on criminal charges of Mr. Minić to certainly be prior to the verdict of the European Court of Human Rights, for which it will be necessary to wait at least three years.

In the meantime, given the family situation of Mr. Minic described in the submitted requests for pardon, and the fact that at any time he can be sent to serve his sentence in prison, taking into account your current practice at handling requests for pardon, we urge you, in the interest of justice and fairness and in the shortest time possible, to consider requests for pardon of Mr. Budislav Minić from February this year and decide to approve them before he is sent to serve his prison sentence.

Yours sincerely,

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LL.M. Tea Gorjanc Prelević, Executive Director of Human Rights Action

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Daliborka Uljarević, Executive Director of the Center for Civic Education

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Stevo Muk, Executive Director of the Alternativa Institute

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LL.M. Aleksandar Saša Zeković, violations of human rights researcher and member of the Council for Civic Control of the Police