

# **LAW ON LEGAL AID**

## **I. BASIC PROVISIONS**

### **Article 1**

In view of the exercise of the right to fair trial, an individual who is unable, given his/her financial situation, to exercise the right to judicial protection without damage to the minimum subsistence level for himself and his family shall be provided legal aid pursuant to this Law.

### **Article 2**

Legal aid implies the provision of resources for full or partial coverage of costs for legal counselling, preparation of pleadings, representation in proceedings before the court, the State Prosecution and the Constitutional Court of Montenegro and any procedure for out-of-court dispute settlement (hereinafter: forms of free legal aid), as well as exemption from payment of the costs of court proceedings.

### **Article 3**

The financial situation of the applicant for granting legal aid (hereinafter: Applicant) shall be determined based on his income and property, and income and property of his family members, if not stipulated otherwise by this Law.

### **Article 4**

The person entitled to legal aid pursuant to this Law shall be referred to a mediation procedure or some other form of out-of-court dispute settlement, provided the relevant legal requirements are met.

### **Article 5**

Exercising the right to legal aid pursuant to this Law shall not limit provision of legal assistance by services, nongovernmental organisations and other organisations established pursuant to law.

## **Article 6**

This Law shall not preclude the possibility for the exercise of the right to exemption from payment of the costs of proceedings and the appointment of a defence counsel or attorney on the account of unfavourable financial situation which is exercised pursuant to the law.

The person granted legal aid pursuant to other law may not assert the right to the same form of legal aid in the same matter of law pursuant to this Law.

## **Article 7**

Legal aid shall not be provided in:

- 1) proceedings before commercial courts and in the procedure for registration of a commercial activity,
- 2) in criminal proceedings and the indemnification proceedings concerning defamation and libel,
- 3) proceedings as per action to reduce the amount of child support in a case of the person obliged to pay support who failed to do so, unless in default of such obligation without any fault of his own.

## **Article 8**

The exercise and assertion of the right to legal aid pursuant to this Law shall be provided without any discrimination on the grounds of the ethnic origin, race, colour, language, religious or political belief, sex, sexual orientation, medical condition, disability or other personal feature.

## **Article 9**

The expressions for natural persons used herewith in male gender shall be understood to imply the same expressions in female gender.

## **Article 10**

The funds for legal aid shall be secured in the Budget of Montenegro (hereinafter: Budget).

## **Article 11**

In the procedure to decide upon an application for granting legal aid (hereinafter: Application) the law governing general

administrative procedure shall apply, unless otherwise stipulated by this Law.

## **II. ELIGIBILITY FOR LEGAL AID**

### **Article 12**

The right to legal aid under the conditions stipulated by this Law may be exercised by:

- 1) a Montenegrin national;
- 2) a stateless person lawfully residing in Montenegro and a person seeking asylum in Montenegro;
- 3) an alien with permanent residence or approved temporary residence and other person legally residing in Montenegro; and
- 4) other person in terms with ratified international treaties.

### **Article 13**

The person referred to in Article 12 of this Law shall have the right to legal aid provided that he is:

- 1) a beneficiary of family cash benefits or other social security right pursuant to the law governing social and child protection,
- 2) a child without parental care,
- 3) a person with special needs,
- 4) a victim of the crime of family or domestic violence and of human trafficking,
- 5) a person of unfavourable financial situation.

### **Article 14**

Pursuant to Article 13 paragraph 1 bullet point 5, a person of unfavourable financial situation shall mean a person owning no property whose monthly income and overall monthly income of his family members does not exceed the amount of 30% of average income in Montenegro for one member and 15% of average income for each subsequent member.

Pursuant to paragraph 1 herein, family members shall mean spouses or common-law-marriage partners and their children, adopted children, and other relatives living in the same domestic unit that he is obliged to support.

### **Article 15**

Pursuant to Article 14 paragraph 1 of this Law, property shall not mean:

- 1) the dwelling of the person with the floor area of 25 m<sup>2</sup> per one household member and 10 m<sup>2</sup> for any subsequent household member, not exceeding 70 m<sup>2</sup> in total;
- 2) the items exempt from enforcement as per legislation governing judgment enforcement in civil matters and securing of claims;
- 3) personal passenger vehicle up to the value of two average monthly income as established by the estimation of the competent tax authority;
- 4) property used for generating income which is, pursuant to this Law, considered when assessing the financial situation of the Applicant for legal aid.

### **Article 16**

Pursuant to Article 13 of this Law, income shall not mean:

- 1) care and support allowance and other care and support benefits and care-giver allowance;
- 2) child benefit;
- 3) newborn allowance;
- 4) commuting allowance, meal allowance and per diem for business travel;
- 5) scholarships and other income intended for training and education;
- 6) income from the work of people with disabilities receiving institutional care, obtained not applying the criteria for regular employment;
- 7) funds intended for recovery from natural disasters and other accidents;
- 8) foster child allowance received by the Applicant's family;
- 9) compensation for non-pecuniary damages due to the reduced daily living activities
- 10) child maintenance based on the law.

### **Article 17**

Legal aid may also be granted to a person whose income and the income of his family members do not exceed twice the amount

stipulated in Article 14 paragraph 1 of this Law, provided that the said person and his family members are economically disadvantaged due to family circumstances, medical condition or other reasons beyond the control of the Applicant and his family members.

#### **Article 18**

When assessing the financial situation of an Applicant, the property and income of family members who are the opposing party to the Applicant in the proceedings for which the relevant Application has been submitted shall not be taken into account.

#### **Article 19**

The financial situation of an Applicant whose right to legal aid was established in a different case within the last six months shall not be assessed in the event of reasoned belief that his financial situation has not changed.

### **III. FORMS OF LEGAL AID**

#### **Article 20**

Legal counselling shall include provision of legal information and legal advice.

#### **Article 21**

Legal information is general information regarding stipulated rights and responsibilities in a given legal field, the procedure for asserting the right before a court and the obligation of recourse to out-of-court dispute settlement.

The right to legal information may be exercised only once in one and the same case.

The provision of legal information must not exceed the period of half an hour unless the complexity of the case requires longer time for provision of information.

#### **Article 22**

Legal advice is detailed information on the method and the opportunities for resolving a certain legal issue in the given legal matter.

### **Article 23**

Preparation of pleadings means preparation of a complaint or other document to initiate court proceedings, an appeal, a constitutional complaint or a document to initiate the procedure before the European Court of Human Rights.

### **Article 24**

Representation means undertaking procedural actions before the court, State Prosecution, the Constitutional Court of Montenegro and in extrajudicial procedures of dispute resolution in accordance with the law.

### **Article 25**

Granting any form of legal aid implies also the exemption from covering the costs of proceedings stipulated in law, with the exception of the costs for defence counsel and attorney.

Legal aid may not be granted to cover costs of the opposing party.

### **Article 26**

Within one and the same case, legal aid may be granted for:

- 1) legal counselling;
- 2) preparation of pleadings;
- 3) legal advice and representation in extrajudicial procedure;
- 4) legal advice and representation in a procedure before the State Prosecution;
- 5) legal advice and representation in proceedings before first and second instance courts;
- 6) legal advice and representation in reference to extraordinary remedies;
- 7) legal advice and representation in reference to constitutional complaint.

## **IV. COMPETENT AUTHORITY GRANTING LEGAL AID**

### **Article 27**

The authority competent for granting legal aid is the president of the basic court or the judge authorised by him (hereinafter:

Competent Authority) within the territory of whose jurisdiction the Applicant is domiciled or resides.

In the case of a person referred to in Article 12 paragraph 1 bullet point 4 appearing as an Applicant, his Application shall be decided upon by the president of the Basic Court in Podgorica.

### **Article 28**

The professional and administrative tasks in the procedure of granting legal aid shall be performed by the legal aid service or section (hereinafter: the Service).

The legal aid service shall be established within basic courts with ten or more judges in office, and the legal aid section shall be established within basic courts with fewer than ten judges in office.

The Service shall employ at least one person meeting the requirements for performing the tasks of advisors with courts.

The president of the court may assign advisors with the court, judicial trainees and volunteers to work within the Service.

### **Article 29**

In addition to the tasks as referred to in Article 28 paragraph 1, the Service shall provide information and advice to interested persons regarding the possibilities and requirements for the exercise of the right to legal aid and other matters related to granting legal aid and assist the Applicant in filing the Application.

## **V. PERSONS AUTHORISED TO PROVIDE LEGAL AID**

### **Article 30**

Legal aid may be provided by lawyers according to order from the list of the Bar Association of Montenegro (hereinafter: Bar Association) compiled as per territorial jurisdiction of basic courts.

The Bar Association shall furnish the Service with the list referred to in paragraph 1 herein.

### **Article 31**

For the provision of legal aid, lawyers are entitled to 50% of the fee envisaged by the Lawyer Tariffs and the reimbursement of necessary expenditures.

Any agreement between a legal aid grantee and a legal aid practitioner on the fee for services or compensation for necessary expenditures for the time of providing legal aid shall be null and void.

The lawyer is obliged to keep records of legal aid services provided.

### **Article 32**

Legal counselling may also be provided by the Service.

The Service is obliged to keep records of legal counselling provided.

### **Article 33**

The contents and the method for keeping records referred to in Article 31 paragraph 3 and Article 32 paragraph 2 of this Law shall be laid down by the ministry responsible for the matters of justice (hereinafter: the Ministry).

## **VI. PROCEDURE FOR GRANTING LEGAL AID**

### **Article 34**

Application is submitted to the Competent Authority via the Service using the stipulated form.

The Application shall contain:

- 1) name, unique citizen registration number, and address of the Applicant;
- 2) name, unique citizen registration number, and address of the Applicant's family members;
- 3) case data;
- 4) description of the requested form of legal aid;
- 5) data on being the beneficiary of family cash benefits or other social protection benefits;
- 6) the information that the Applicant is a child without parental care;
- 7) declaration of property and income of the Applicant and his family members.

If the Applicant is the person referred to Article 13 paragraph 1 bullet points 1 and 2 of this Law, he is obliged to submit the evidence of being the beneficiary of social protection benefits or a person without parental care.

The Applicant is criminally and materially liable for the accuracy of data provided pursuant to paragraph 2 of this Article and shall be informed thereof by the Service when filing the Application.

The Application form shall be laid down by the Ministry.

### **Article 35**

The data on titles over immovable property, securities and tax liabilities of the Applicant and members of his family shall be established by the Service.

The cases involving an international element where it is not possible to ascertain the data referred to in paragraph 1 herein, the international rules relating to legal assistance in court proceedings binding for Montenegro shall apply.

### **Article 36**

Provisions of Article 35 of this Law shall not apply in the event when legal information must be urgently provided, due to the risk of the person seeking legal information not being able to assert some right within the time limit stipulated in law.

In the event stipulated under paragraph 1 of this Article, the Competent Authority shall decide on granting other forms of legal aid within eight days from the date of filing the Application.

If the Competent Authority subsequently ascertains that the legal aid granted pursuant to paragraphs 1 and 2 herein has not been justified, the provisions of this Law referring to unduly granted legal aid shall apply.

### **Article 37**

If an Applicant declared false information in the declaration referred to in Article 34 paragraph 2 bullet point 7 of this Law, the Competent Authority shall pass the decision to reject the Application.

In the event referred to in paragraph 1 herein, the Applicant may not resubmit the Application within six months from the date when the decision to reject the Application was passed.

### **Article 38**

When deciding on an Application, the Competent Authority shall assess all circumstances and facts of the Application subject matter, and in particular whether the complaint or other claim in case for

which the Application was filed is manifestly unfounded, or whether there are probable chances of successful action.

### **Article 39**

The case in relation to which an Application was filed is deemed as manifestly unfounded if:

- 1) the value of the claim is disproportionate to the actual state of affairs,
- 2) the Applicant is abusing the possibility of being granted legal aid for a legal matter for which the Applicant would not have otherwise sought legal services even if his financial situation would allow that, or
- 3) it is contrary to the case law in legal matters with similar factual state and legal grounds.

### **Article 40**

The circumstances and facts referred to in Articles 38 and 39 of this Law shall not be assessed when deciding on the Application requesting legal aid for the submission of constitutional complaint and conducting the procedure as per a constitutional complaint if the legal requirements for lodging a constitutional complaint have been met.

### **Article 41**

Legal aid shall not be granted to an Applicant for a case in which he has previously desisted from complaint or pursuant to law it is believed that he has desisted from the complaint.

### **Article 42**

The decision upon an Application shall be passed within 15 days from the date of Application filing.

The decision by which the Application is granted shall contain in particular the data on the applicant, the form of legal aid granted, and detailed data of the case or the legal matter for which legal aid has been granted.

The decision rejecting an Application must be reasoned.

### **Article 43**

As a rule, legal aid is granted separately for each case for which the Application is filed.

The Competent Authority may grant legal aid for several cases if mutually linked for the reasons of the same factual state or if the dispute resolution depends on the resolution of several cases.

#### **Article 44**

The Competent Authority may:

- 1) grant the forms of legal aid the Applicant stated in the Application if assessing the desired outcome would be attained by providing the said form;
- 2) partly grant the requested forms of legal aid in a certain stage of the proceedings in the given legal matter;
- 3) determine the number of hours of legal counselling, the number of pleadings and appearances before the court;
- 4) limit legal aid to a number or type of evidence when related to disproportional costs of presenting evidence.

#### **Article 45**

Should the applicant fail to state the specific form of legal aid in his Application, the decision on the form of legal aid shall be passed by the Competent Authority at its discretion.

#### **Article 46**

The decision by which the Competent Authority granted legal aid is submitted to the court before which the case for which legal aid was granted is pending if the proceedings already commenced.

#### **Article 47**

The decision of the Competent Authority as per an Application shall be final.

An administrative dispute may be instigated against the decision of the Competent Authority.

The administrative dispute referred to in paragraph 2 herein shall be deemed urgent.

#### **Article 48**

The Service issues a referral to the Applicant who has been granted legal aid.

The referral contains:

- 1) name, unique citizen registration number and the address of the person granted legal aid;
- 2) number and date of the decision of the Competent Authority on granting legal aid;
- 3) form of legal aid granted;
- 4) the name of lawyer appointed by the Service according to the order of appearance in the list referred to in Article 30 paragraph 1 of this Law;
- 5) brief description of the legal matter for which legal aid has been granted;
- 6) date of issuance of a referral and the signature of authorised person issuing the referral;
- 7) type and date of performed legal actions and the person who provided legal aid, with enclosures;
- 8) the amount of necessary expenditures incurred through the provision of legal aid;
- 9) date of returning the referral;
- 10) amount of costs payable;
- 11) signature of the person who compiled the calculation of costs;
- 12) proposal of the Competent Authority for payment;
- 13) warning about legal consequences of violating the provisions of this Law on the use of referral.

Referrals are issued and signed by a person employed with the Service authorised by the Competent Authority.

A referral is issued in a form laid down by the Ministry.

#### **Article 49**

If several forms of legal aid have been approved by the decision on granting legal aid, the Service may issue to the Applicant separate referrals for each form or separate referrals for individual legal actions in a given form of legal aid.

#### **Article 50**

After the service delivery, the legal aid practitioner is obliged to submit to the Service the referral together with the original receipts or report of legal counselling.

If the legal aid practitioner fails to return the referral within eight days from the service delivery date, he loses the right to reimbursement of costs for legal aid provided.

### **Article 51**

The report of legal counselling is made out on a form laid down by the Ministry.

The report is made in three copies, signed by the person granted legal aid, who is issued one copy thereof.

The legal information and the legal advice provided, the time of duration and, if so the case, the reasons for prolonged legal counselling delivery must be precisely described in the legal counselling report.

### **Article 52**

The Competent Authority shall decide on the costs for legal aid provided not later than 15 days from the day of receiving the referral with required enclosures.

The decision referred to in paragraph 1 herein shall have the power of an enforcement document.

## **VII. CHANGED CIRCUMSTANCES AND UNDULY GRANTED LEGAL AID**

### **Article 53**

Within the time from granting legal aid to the date of final cost calculation, the person granted legal aid is obliged to keep the Service informed of all changes in facts and circumstances relevant for the exercise of the right to legal aid.

The person granted legal aid must report the changes referred to in paragraph 1 herein within eight days from the day of learning about the same, and not later than three months from the day of the changes having occurred.

### **Article 54**

When the Service has established the occurrence of circumstances which indicate that the person granted legal aid ceases to qualify for legal aid or meets the requirements for some other form of legal aid, it shall instigate an ex officio procedure for establishing eligibility for the continuation of legal aid.

Having conducted the procedure referred to in paragraph 1 herein, the Service shall propose to the Competent Authority to pass

the decision on cessation of the granted legal aid or stipulate some other form of legal aid.

The Competent Authority shall pass the decision referred to in paragraph 2 herein promptly, and if due to objective reasons it proves not to be possible, not later than eight days from the day of submitting the proposal to that effect.

### **Article 55**

Already effectuated legal aid, granted based on false data referred to in Article 34 paragraph 2 of this Law or used unjustifiably due to concealing the change of facts and circumstances referred to in Article 52 paragraph 1 of this Law shall be deemed as unduly granted legal aid.

In the event referred to in paragraph 1 herein, the person granted legal aid is obliged to reimburse the costs of unduly granted legal aid.

The decision of the Competent Authority establishing that legal aid was unduly granted shall contain the method and the time for reimbursement of costs of legal aid granted. The decision of the Competent Authority shall have the power of an enforcement document.

At the proposal of the person who was unduly granted legal aid, the Competent Authority and the said person may enter into a written agreement on the method for reimbursement of costs of unduly granted legal aid which shall have the power of an enforcement document.

In case of failure of the person unduly granted legal aid to reimburse the costs in the manner and within the times stipulated in the decision referred to in paragraph 3 herein or the agreement referred to in paragraph 4 herein, the competent tax authority, at the proposal of the Competent Authority, shall enforce the decision according to the delinquent tax collection enforcement procedure.

## **VIII. PAYMENT OF COSTS INCURRED IN LEGAL AID PROVISION**

### **Article 56**

Claims of a person granted legal aid against the opposing party regarding the costs of proceedings, which the court, by the pronouncement ending the court proceedings, adjudicated in favour

of the person granted legal aid, belong to the budget up to the amount of costs paid out as legal aid.

In case referred to in paragraph 1 herein, in the decision on the costs of the court proceedings, the court shall determine the amount of costs paid out as legal aid that belong to the budget.

If the return of funds paid in the scope of legal aid is not performed within 30 days from the day when the decision from the paragraph 1 of this article became valid, the Service shall inform the Protector of the property-legal interests of Montenegro who initiates the proceedings for the return of funds which belong to the budget in accordance with the Law.

### **Article 57**

If the legal aid grantee was fully or partly successful in the proceedings and acquired property, or income, he is obliged to refund to the budget the amount of costs incurred on the grounds of granted legal aid.

In case referred to in paragraph 1 herein, the person granted legal aid may not be requested to refund to the budget the amount of costs exceeding his gain in the proceedings.

Legal aid grantee is not obliged to refund the costs of proceedings if he asserted therein the right to support or compensation for damages for lost support due to the death of the person who was obliged to provide support.

## **IX. RECORDS**

### **Article 58**

The Service shall keep legal aid records containing in particular:

- 1) name, unique citizen registration number and address of the Applicant;
- 2) name, unique citizen registration number and address of the Applicant's family members;
- 3) case reference number;
- 4) form of legal aid granted;
- 5) decision reference number and date;
- 6) date of decision enforceability;

- 7) the amount of funds paid out and refunded; and
- 8) other data pursuant to law.

The contents and the method of record-keeping referred to in paragraph 1 herein shall be laid down by the Ministry.

## **X. LEGAL AID IN DISPUTES INVOLVING INTERNATIONAL ELEMENTS**

### **Article 59**

When a Montenegrin court has jurisdiction in a dispute with an international element in which the Applicant is a national of or a person legally residing in an EU Member State, with the exception of the Kingdom of Denmark (a domestic dispute with an international element), the Applicant is entitled to legal aid in accordance with this Law.

If the Applicant referred to in paragraph 1 herein provides a credible evidence that due to the difference in the costs of living between the country of his nationality and Montenegro he is unable to cover for legal service without the detriment to the minimum subsistence level for himself and his family, he may be granted legal aid.

### **Article 60**

The Applicant referred to in Article 59 paragraph 1 of this Law or the body responsible for filing the Application in the country of his nationality in which the Applicant resides, shall submit the Application to the Ministry.

The Application in a domestic dispute involving international elements shall be submitted to the Ministry in writing in the form envisaged by the Commission of European Communities or stipulated by a ratified international treaty or pursuant to Article 34 of this Law.

The Application in a domestic dispute involving international elements must be filled out in Montenegrin and all supporting documents must be translated into Montenegrin.

If the Application in a domestic dispute involving international elements is not filled out or if the supporting documents are not translated into Montenegrin, the Ministry shall return them to the Applicant referred to in Article 59 paragraph 1 or the body referred to

in paragraph 1 herein, together with the notification of mandatory use of Montenegrin language.

The Ministry shall forward the Application in a domestic dispute involving international elements to the basic court having jurisdiction in the matter.

### **Article 61**

When the court or court decision enforcement authority located in an EU Member State, with the exception of the Kingdom of Denmark, has jurisdiction over a dispute involving international elements in which the Applicant is the person referred to in Article 12 of this Law (a foreign dispute involving international elements), the Applicant is entitled to legal counselling in accordance with this Law.

An Application in a foreign dispute involving international elements shall be filed with the basic court at whose territory of jurisdiction the Applicant is domiciled or resident filing out the form stipulated in Article 60 paragraph 2 of this Law.

The basic court shall forward the Application in the foreign dispute involving international elements to the Ministry, except if the case is manifestly unfounded pursuant to Article 39 of this Law.

The Application in the foreign dispute involving international elements and the supporting documents must be translated into the language of the EU Member State to which the Application is addressed.

If the Application in a foreign dispute involving international elements is not filled out or if the supporting documents are not translated into the language of the EU Member State to which the Application is addressed, the basic court shall return them to the Applicant referred to in paragraph 1 herein, together with the notification of mandatory use of the language of the EU Member State.

The Ministry shall forward the Application in a foreign dispute involving international elements to the competent authority of the EU Member State in which the dispute is handled.

### **Article 62**

The Service shall keep separate records of legal aid granted in domestic and foreign disputes involving international elements.

The records of legal aid granted in domestic disputes involving international elements shall be kept in accordance with Article 58 of this Law.

The records of legal aid granted in foreign disputes involving international elements shall contain:

1) name, date and place of birth, address, and the nationality of the legal aid grantee;

2) ID number;

3) data on when the Application was forwarded to the competent authority;

4) data on the decision of the competent authority upon the Application; and

5) other necessary data.

The contents, method of record-keeping and retaining records referred to in paragraph 3 herein shall be laid down by the Ministry.

## **XI. SUPERVISION**

### **Article 63**

The authority before which the procedure granting legal aid was conducted shall ex officio take care of the quality of legal aid delivered.

If the quality of legal aid delivered is manifestly unsatisfactory, the authority referred to in paragraph 1 herein shall warn the Competent Authority and the person granted legal aid, and is obliged to make an official report thereof.

In case referred to in paragraph 2 herein, the person granted legal aid may submit a request to replace the appointed legal aid practitioner.

The Competent Authority shall decide upon the request referred to in paragraph 3 herein within eight days from the day of the request submission.

### **Article 64**

If in case referred to in Article 63 paragraph 2 of this Law the Competent Authority passes the decision to replace the appointed legal aid practitioner, he will submit to the Bar Association the proposal to remove the given lawyer from the list referred to in Article 30 paragraph 1 of this Law.

### **Article 65**

The administrative supervision over the law implementation shall be carried out by the Ministry.

## **XI. TRANSITIONAL AND FINAL PROVISION**

### **Article 66**

Secondary legislation for the implementation of this Law shall be passed within nine months from the day this Law entering into force.

### **Article 67**

This Law shall enter into force on the eighth day upon its publication in the Official Gazette of Montenegro, and shall be applied as of January 1, 2012.