



Pro Bono Practices and Opportunities in Montenegro¹

INTRODUCTION

Montenegro's legal system is currently undergoing a period of extensive reform and restructuring, and practitioners should be aware that the legal profession and pro bono culture in Montenegro are still developing. Because Montenegro's pro bono culture is still in a relatively early stage of development, pro bono opportunities come from individual organizations rather than from national clearinghouses, which do not appear to exist at this time. Nonetheless, Montenegro's laws against domestic violence and the general development of its legal sector bode well for the future prospects of pro bono work in the country.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The government of Montenegro is based on the principle of separation of powers, whereby the judicial, legislative, and executive branches, at least in theory, are independent of each other.² Montenegro, like other continental European countries, adheres generally to a civil law model of jurisprudence.³ Due to the relative youth of the country, Montenegro's Constitution and governing laws were developed with reference to the principles of its European neighbors. Montenegro's Constitution generally complies with European Union standards and was developed with input from the Council of Europe through its Venice Commission.⁴ Additionally, many of the laws governing Montenegro's judiciary are aimed at ensuring that Montenegro conforms to European Union standards.⁵

The Courts

The judiciary of Montenegro is in flux. Montenegro only recently became fully independent, in 2006, prior to which it was in a union with neighboring Serbia.⁶ Since 2006, the judiciary has undergone a number of structural and institutional reforms in preparation for Montenegro's application to join the European Union.⁷ Montenegro has established 15 Basic Courts, two High Courts, two Commercial Courts, the Court of Appeals, the Administrative Court, the Supreme Court, and the Constitutional Court.⁸

The court system in Montenegro provides for judicial review in both criminal and civil matters and divides such jurisdiction among several different types of courts.

¹ This chapter was drafted with the support of Milica Popović, Sonja Gitarić and Ksenija Ivetić, CMS Reich-Rohrwig Hainz.

² Country Reports on Human Rights Practices: Montenegro, U.S. DEP'T OF STATE BUREAU OF DEMOCRACY 1 (2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236558> (last visited on September 4, 2015).

³ Branka Lakočević, Judicial Reform in Montenegro in the Scope of the European Union Integration Process, UNITED NATIONS DEVELOPMENT PROGRAMME 3 (Jun. 17, 2009), available at http://europeandcis.undp.org/uploads/public1/files/Montenegrin_judiciary_and_the_EU_Bratislava_conference%5B1%5D.pdf (last visited on September 4, 2015) [hereinafter JUDICIAL REFORM IN MONTENEGRO].

⁴ Id. at 2.

⁵ Id. at 3.

⁶ Id. at 2.

⁷ Id. at 4–6.

⁸ Id. at 3.



- The Basic Court is the court of first instance for certain criminal charges and civil matters.⁹
- The High Courts act as courts of first instance for more serious criminal charges, as well as appellate courts to review decisions made by the Basic Courts.¹⁰
- The Commercial Courts hear disputes involving local and foreign business entities, registration of business entities, bankruptcy and liquidation, copyright and intellectual property.¹¹
- The Court of Appeals acts as an appellate court for decisions made by the High Courts and Commercial Courts.¹²
- The Administrative Court has jurisdiction to hear disputes regarding the legality of final administrative acts.¹³
- The Supreme Court can provide relief from the decisions of any lower court and the Judicial Council and can decide on fundamental issues of jurisdiction in certain circumstances.¹⁴
- The Constitutional Court decides on matters regarding compliance with the Montenegro Constitution, international treaties, other constitutional complaints such as electoral disputes and government actions during a state of war and emergency.¹⁵

In addition, the Judicial Council oversees the administration of the court system. The Judicial Council is a ten-member body comprised of the President of the Supreme Court (who is selected by Parliament), four judges selected by the Conference of Judges, the Minister of Justice, two Members of Parliament (also selected by Parliament), and two “distinguished lawyers” appointed by the President of Montenegro. In 2013, the Montenegrin Constitution was amended to address the procedure for the appointment of judges by increasing merit-based selection reforms.¹⁶

The Practice of Law

The legal community in Montenegro is relatively small. Although the Bar Association of Montenegro was established over 100 years ago, its membership includes only about 800 attorneys-at-law (i.e., lawyers registered with the Bar Association and authorized to practice before the courts and otherwise provide legal services).¹⁷ Because the law student population consists of several thousand students,¹⁸ the lawyer community in Montenegro is likely much larger than the approximately 800 attorneys-at-law registered with the Bar Association. Most lawyers appear to be employed either in private practice or in government, but there is no detailed breakdown of lawyers by industry, business sector or practice type.¹⁹

⁹ Government of Montenegro Directorate for Anti-Corruption Initiative, Integrity and Capacity Assessments of the Judiciary in Montenegro, INSTITUTE FOR ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT 8–9 (Oct. 2008), available at <http://iper.org.me/en/content/integrity-and-capacity-assessments-of-the-judiciary-in-montenegro> (last visited on September 4, 2015).

¹⁰ Id. at 9.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ LAW ON THE CONSTITUTIONAL COURT OF MONTENEGRO, art. 20, available at <http://www.ustavnisudcg.co.me/engleska/PDF/Law%20on%20the%20Constitutional%20Court%20of%20Montenegro%20.pdf> (last visited on September 4, 2015).

¹⁶ Corruption and Anti-Corruption in Montenegro 2013-2014, CENTER FOR DEMOCRATIC TRANSITION 28 (2015), available at http://seldi.net/fileadmin/public/PDF/Publications/CAR_Montenegro/CAR_Montenegro_2014_ENG.pdf (last visited on September 4, 2015).

¹⁷ ADVOCACY ACT, art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO NO. 79/2006.

¹⁸ Id.

¹⁹ See id.; List of Attorneys, EMBASSY OF THE UNITED STATES PODGORICA, MONTENEGRO, <http://podgorica.usembassy.gov/attorneylist.html> (last visited on September 4, 2015).



Other parts of the legal community are similarly small in number. There are only a few hundred judges and fewer than 100 prosecutors in Montenegro.²⁰

Legal Regulation of Lawyers

Attorneys-at-law and the provision of state-funded legal aid and pro bono services are regulated generally by the Advocacy Act.²¹ The Advocacy Act outlines the responsibilities of lawyers practicing in Montenegro, as well as requirements for qualification to practice.²² The same issues are in further detail regulated by the Statute of the Bar Association of Montenegro.²³ Lawyers must also abide by a code of ethics.²⁴ The Advocacy Fees Act details restrictions and requirements for lawyer compensation.²⁵ The Act appears to apply exclusively to work performed for a Montenegrin citizen in Montenegro.²⁶

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Many Montenegrins face a combination of low wages and relatively high court costs and are consequently unable to afford legal action in the Montenegrin courts.²⁷ To address this issue, the Parliament of Montenegro adopted the Law on Legal Aid (the “Law”) in 2011 and began implementing the Law in 2012.²⁸ The law was further amended in 2015.²⁹ The Law created a formal process through which certain types of individuals are provided free legal counseling, free aid in the preparation of briefs and free representation in court proceedings and out-of-court settlement proceedings in the majority of the country’s courts.³⁰ Free legal aid is explicitly not provided in commercial registration matters, commercial court proceedings, libel and defamation proceedings and reduction of child support proceedings.³¹

²⁰ JUDICIAL REFORM IN MONTENEGRO, *supra* n.3, at 3.

²¹ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Montenegro COUNCIL OF EUROPE 27 (Mar. 17, 2009), [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)10Rep-MNE_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)10Rep-MNE_en.pdf) (last visited on September 4, 2015).

²² ADVOCACY ACT (Official Gazette of the Republic of Montenegro, No. 79/06 Dec. 26, 2006), available at http://www.advokatskakomora.me/zakon_o_ad.html (last visited on September 4, 2015).

²³ OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO, NO. 34 (JUN. 2005), 50/07.

²⁴ ADVOCACY PROFESSIONAL CODE OF ETHICS (Jan. 1999), <http://www.advokatskakomora.me/kodeks1.html> (last visited on September 4, 2015).

²⁵ ADVOCACY FEES ACT (Official Gazette of the Republic of Montenegro, No. 79/05 25 Feb. 2005), available at http://www.advokatskakomora.me/advokatska_tarifa.html (last visited on September 4, 2015).

²⁶ *Id.* art. 2.

²⁷ Rule of Law, Access to Justice and Legal Empowerment News Update: Democratic Governance, UNITED NATIONS DEVELOPMENT PROGRAMME (Nov. 2012), http://www.pravnapomoc.me/images/stories/Global_Newsletter_2012.pdf (last visited on September 4, 2015).

²⁸ See About Us, LEGAL AID MONTENEGRO, http://www.pravnapomoc.me/index.php?option=com_content&view=category&layout=blog&id=3&Itemid=8&lang=en (last visited on September 4, 2015).

²⁹ OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO NO. 20/2015

³⁰ LAW ON LEGAL AID, art. 2, available at http://www.pravnapomoc.me/images/stories/zakoni/Law_on_Legal_Aid.pdf (last visited on September 4, 2015).

³¹ *Id.* art. 7.



State-Subsidized Legal Aid

Under the Law, reduced fee and/or free legal aid is available to persons of poor financial standing, children without parental care, individuals with disabilities, victims of domestic violence and victims of human trafficking.³² The Law on Legal Aid defines a person of poor financial standing as a person who owns no property and whose family's monthly income does not exceed 30% of the average wage in Montenegro for the leading income earner and 15% of the average wage for any subsequent income earners.³³ There are specific exceptions to these definitional requirements that allow individuals to own small amounts of property for basic subsistence (e.g., a single individual may own a dwelling that has a floor area up to 25 m² and still receive state-subsidized legal aid)³⁴ and that exempt certain items from the income calculation (e.g., disability benefits, newborn benefits, commuting costs).³⁵ Additionally, one must either be a Montenegrin citizen, a legal resident of Montenegro or a person seeking asylum in Montenegro to exercise the right to free legal aid, though ratified international treaties may create an exception to this rule.³⁶

Under the Law, only members of the Bar Association of Montenegro may provide legal aid.³⁷ These lawyers will be referred to potential clients by the court legal aid service, which utilizes a list of lawyers that voluntarily agree to offer state-subsidized legal aid.³⁸ Although legal aid recipients may not be charged for the time spent on work, lawyers are still entitled to 50% of legal tariffs and reimbursements of necessary expenditures.³⁹ Thus, should a lawyer choose to charge for the tariff, the state-funded legal aid recipient will still be required to pay up to 50% of the legal tariff out of pocket. Additionally, lawyers that provide assistance following a referral by the court legal aid service are compensated for their work out of funds set aside in the Budget of Montenegro.⁴⁰

Unmet Needs and Access Analysis

The Law on Legal Aid has been criticized on several different grounds. Because the Law does not cover proceedings before the Administrative Court, indigent individuals are not able to petition the court to establish their rights to social assistance, disability insurance benefits, and pension benefits.⁴¹ The Law does not specifically provide coverage for victims of torture, state abuse or discrimination.⁴² Further, the eligibility restrictions contained within the Law are extremely strict.⁴³ This may create a coverage gap within which many are unable to afford legal help on their own but are not poor enough to qualify for state-subsidized legal aid.

³² Id. art. 13.

³³ Id. art. 14.

³⁴ Id. art. 15.

³⁵ Id. art. 16.

³⁶ Id. art. 12.

³⁷ Id. art. 30.

³⁸ Id. arts. 28-34.

³⁹ Id. art. 31; ADVOCACY FEES ACT arts. 5-6.

⁴⁰ LAW ON LEGAL AID, art. 10.

⁴¹ Criticism of the Law on Free Legal Aid, HUMAN RIGHTS ACTION MONTENEGRO, http://www.hraccion.org/wp-content/uploads/Kritika_Zakona_o_besplatnoj_pravnoj_pomoci.pdf (last visited on September 4, 2015).

⁴² Id.

⁴³ Id.



Alternative Dispute Resolution

There appears to be a burgeoning alternative dispute resolution culture in Montenegro that may be able to fill in some of the gaps within the Law on Legal Aid. The Montenegrin Ombudsman, for example, will provide free legal aid to individuals that have been harmed by improper and illegal acts of the government (e.g., the wrongful application of laws or the government's failure to enforce rendered legal decisions).⁴⁴ In addition, the Center for Mediation of Montenegro provides mediation proceedings and collaborates with government agencies, NGOs and financial companies to develop and implement mediation regulations throughout Montenegro.⁴⁵

PRO BONO ASSISTANCE

Pro Bono Opportunities

Montenegro's pro bono culture appears to be less-developed than its state-funded legal aid counterpart, and many international development programs are aimed at promoting the Law on Legal Aid rather than on providing private pro bono legal aid.⁴⁶ However, the Montenegrin government has undertaken judicial reforms that have made pro bono services easier for individual citizens to access and simpler for organizations and individual attorneys to provide.⁴⁷

Though private attorneys are not required to provide pro bono legal work, Montenegrin law firms and private attorneys regularly provide such services.⁴⁸ In addition, prominent international organizations and agencies such as the Red Cross or the United Nations High Commissioner for Refugees provide pro bono legal work regarding refugee and other human rights issues,⁴⁹ either themselves or by engaging an implementing local partner.⁵⁰ Other potential opportunities for pro bono work include matters regarding fighting corruption, promoting government transparency and other governance issues.⁵¹ Because the pro bono culture in Montenegro is still in a relatively early stage of development, it is likely easier to find pro bono opportunities from individual organizations rather than from a national clearinghouse or referral

⁴⁴ About the Protector, MONTENEGRO OMBUDSMAN, http://www.ombudsman.co.me/eng/o_zastitniku.htm (last visited on September 4, 2015).

⁴⁵ See Mediation in Montenegro, CENTRE FOR MEDIATION (Feb. 13, 2012), <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/debt-resolution-and-business-exit/upload/Mediation-in-Montenegro.pdf> (last visited on September 4, 2015).

⁴⁶ See Promotion of Legal Aid and Mediation, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO, <http://www.me.undp.org/content/montenegro/en/home/ourwork/democraticgovernance/successstories/legalaid/> (last visited on September 4, 2015).

⁴⁷ See UNDP Continues to Support Judicial Reform in Montenegro, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO (Dec. 23, 2013), <http://www.me.undp.org/content/montenegro/en/home/presscenter/articles/2013/12/23/undp-helps-in-further-judicial-system-reform-in-montenegro.html> (last visited on September 4, 2015).

⁴⁸ See, e.g., Human Rights, PRELEVIC LAW FIRM, http://www.prelevic.com/human_rights.htm (last visited Jun. 25, 2015); Pro Bono Work, VUJACIC LAW OFFICES, <http://www.lawoffice-vujacic.com/newsletter/pro-bono-work> (last visited on September 4, 2015).

⁴⁹ See, e.g., Montenegro Pro Bono Directory, INTERNATIONAL REFUGEE RIGHTS INITIATIVE, <http://www.refugeelegalaidinformation.org/montenegro-pro-bono-directory> (last visited on September 4, 2015).

⁵⁰ See Implementing Partner with the UNHCR Providing Legal Aid, Counselling for Refugees, LEGAL CENTER PODGORICA, <http://www.refugeelegalaidinformation.org/montenegro-pro-bono-directory#sthash.ufVJkPII.dpuf> (last visited on September 4, 2015).

⁵¹ Id.



organization. For example, Red Cross Montenegro has its own programs relating to international human rights, but does not appear to act as a referral organization for other NGOs.⁵²

Lawyers in partnerships in Montenegro also provide pro bono work for local NGOs.⁵³ In addition, NGOs cooperate with lawyers to provide citizens with pro bono services regarding corruption and organized crime matters, domestic violence matters, human rights violations⁵⁴ and LGBT rights.⁵⁵

Historic Development and Current State of Pro Bono

Given the relative youth of the country, the development of Montenegro's pro bono culture is still in an early, formative stage. There are many regulatory and practical barriers to engaging in pro bono work in Montenegro. Regulatory barriers relate primarily to licensing restrictions and uncertainty regarding the structure of the legal system. The Montenegrin Constitution established the right to legal aid only as far as it is provided by members of the Bar Association,⁵⁶ but other services or institutions may also provide pro bono services.⁵⁷ Further, the Advocacy Fees Act restricts members of the Bar Association from charging clients less than 50% of the normal tariff for legal work.⁵⁸ Thus, even when an individual receives state-subsidized legal aid or private pro bono services, he or she may still be required to pay a portion of his or her legal fees, should the attorney providing the services decide to charge available legal tariffs.⁵⁹

Practical barriers relate mostly to the relative nascence of much of Montenegro's judicial system. As noted above, there are relatively few licensed lawyers admitted to practice in front of Montenegro courts. As of June 2015, there are approximately 775 licensed lawyers for Montenegro's population of approximately 620,000 people, or one lawyer per 800 people.⁶⁰ In addition, many Montenegrin citizens do not trust the judicial system or the government in general, and they feel that corruption within the judiciary and the government is the issue "that most gravely affects the quality of life" in Montenegro.⁶¹

Pro Bono Resources

NGO activity and NGOs that may present opportunity for pro bono work in Montenegro include:

- Pravni Centar-Legal Center
- Address: Legal Center Podgorica, 4/1 Balsica Street, 81000 Podgorica, Montenegro
Phone: + 382.20.23.09.13
Website: <http://www.pravnicentar.com> (last visited on September 4, 2015)
Email: pravnicentar@t-com.me

⁵² See Organizational Development, MONTENEGRO RED CROSS, available at <http://www.ckcg.co.me/en/djelatnosti/organizacioni-razvoj> (last visited on September 4, 2015).

⁵³ See, e.g., Human Rights, PRELEVIC LAW FIRM, http://www.prelevic.com/human_rights.htm (last visited on September 4, 2015); Pro Bono Work, VUJACIC LAW OFFICES, <http://www.lawoffice-vujacic.com/newsletter/pro-bono-work> (last visited on September 4, 2015).

⁵⁴ See, e.g., Violence Against Women: Montenegro supra n. 26.

⁵⁵ See, e.g., About Us, LGBT FORUM PROGRES, <http://lgbtprogres.me/en/o-nama-2/> (last visited on September 4, 2015).

⁵⁶ LAW ON LEGAL AID art. 30.

⁵⁷ See, e.g., Montenegro Pro Bono Directory, supra n. 51.

⁵⁸ ADVOCACY FEES ACT, art. 4.

⁵⁹ Id.

⁶⁰ List of Lawyers by Municipality, supra n. 19.

⁶¹ Olivera Komar & Pavle Gegaj, The Montenegro I Want: Report on Post-2015 National Consultations in Montenegro, UNITED NATIONS DEVELOPMENT PROGRAMME IN MONTENEGRO (April 2013), <http://www.me.undp.org/content/dam/montenegro/docs/publications/Post2015/Post%202015%20Montenegro%20ENG.pdf> (last visited on September 4, 2015).



- MANS: <http://www.mans.co.me/>
- Youth Initiative for Human Rights: <http://www.yihr.me> (last visited on September 4, 2015)
- Human Rights Action: <http://www.hraction.org> (last visited on September 4, 2015)
- Shelter for Women and Children
- Address: Ulica Ivana Crnojevica br.89, 81000 Podgorica, Montenegro
Phone: +382.20.232.352
Website: <http://www.szk.me> (last visited on September 4, 2015)
Email: shelter@t-com.me
- SOS Hotline for Women and Children Victims of Violence: <http://www.sosnk.org>
- Civic Alliance
- Address: Vukice Mitrovic 16, 81000 Podgorica, Montenegro
Phone: +382.20.655/175
Website: <http://www.gamn.org> (last visited on September 4, 2015)
Email: office@gamn.org
- Center for the Development of Non-Governmental Organisation (free legal aid to other NGOs)
- Address: CRNVO, Dalmatinska 78, 20 000 Podgorica, Crna Gora, Montenegro
Phone: +382.20.219.120 Fax: +382.20.219.121
Website: <http://www.crnvo.me/> (last visited on September 4, 2015)
Email: crnvo@crnvo.me

The following NGOs do not provide pro bono services, but support various projects that may provide them:

- United Nations Development Program in Montenegro
- Address: UNDP, UN Eco House, Stanka Dragojevic bb, 81000 Podgorica, Montenegro
Phone: +382.20.447.400
Website: <http://www.me.undp.org/> (last visited on September 4, 2015)
Email: registry.me@undp.org
- United Nations High Commissioner for Refugees
- Website: <http://www.unhcr.org/pages/49e48d986.html> (last visited on September 4, 2015)
Email: mnepo@unhcr.org

CONCLUSION

Practitioners who seek to engage in pro bono work in Montenegro might first try to locate pro bono opportunities, likely relating to anti-corruption, anti-domestic violence, refugee or rule of law matters, through established international or local NGOs (e.g., MANS, noted above). Alternatively, teaming up with local counsel may be an easier option, as it appears that there are more opportunities to render state-funded legal aid than opportunities to provide pro bono services. Otherwise, practitioners should monitor the development of the legal sector in Montenegro; as the legal sector further develops, increased opportunity for pro bono work should follow.

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