

WHO ARE THE PERSONS AUTHORISED TO PROVIDE FREE LEGAL AID?

All forms of free legal aid are provided by attorneys, according to the order from the list of attorneys compiled by the Bar Association, on the basis of the territorial jurisdiction of basic courts. Legal advice may also be provided by the free legal aid service of the competent court.

PROCEDURE FOR GRANTING FREE LEGAL AID

The application for free legal aid is filed in the form which may be obtained in any basic court, i.e. free legal aid service.

Data concerning the right to immovable property, securities and tax liabilities of the applicant and his/her family members is scrutinised by the service.

The applicant who has been granted free legal aid is issued a referral which, amongst other things, contains the following: the type of free legal aid that has been granted, the name of attorney who has been assigned, short description of the legal matter for which free legal aid has been granted.

The person who has been granted free legal aid is obligated to notify the service of any changes to his/her financial standing starting from the moment when the free legal aid was granted until final calculation of costs.

Where the beneficiary of free legal aid has been successful in the procedure, either partially or entirely, and acquired property or generated income, he/she is obligated to repay to the budget the amount of costs incurred as a result of free legal aid that has been granted.

Depending on the place of residence of the applicant, free legal aid is provided by the following:

- 1) Basic Court in Bar – for the territory of Bar municipality;
- 2) Basic Court in Berane – for the territory of Berane and Andrijevica municipalities;
- 3) Basic Court in Bijelo Polje – for the territory of Bijelo Polje and Mojkovac municipalities;
- 4) Basic Court in Danilovgrad – for the territory of Danilovgrad municipality;

- 5) Basic Court in Žabljak – for the territory of Žabljak and Šavnik municipalities;
- 6) Basic Court in Kolašin – for the territory of Kolašin municipality;
- 7) Basic Court in Kotor – for the territory of Kotor, Budva and Tivat municipalities;
- 8) Basic Court in Nikšić – for the territory of Nikšić and Plužine municipalities;
- 9) Basic Court in Plav – for the territory of Plav municipality;
- 10) Basic Court in Pljevlja – for the territory of Pljevlja municipality;
- 11) Basic Court in Podgorica – for the territory of the Capital City of Podgorica;
- 12) Basic Court in Rožaje – for the territory of Rožaje municipality;
- 13) Basic Court in Ulcinj – for the territory of Ulcinj municipality;
- 14) Basic Court in Herceg Novi – for the territory of Herceg Novi municipality;
- 15) Basic Court in Cetinje – for the territory of the Old Royal Capital of Cetinje;



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BASIC COURT



RIGHT TO FREE
LEGAL AID

This brochure has been produced with the aim of providing more detailed explanation of the requirements for granting free legal aid, the scope of the services granted, providers of free legal aid services and procedure in which free legal aid services are granted, all in accordance with the Law on Free Legal Aid.

WHO IS ENTITLED TO RECEIVE FREE LEGAL AID?

Free legal aid means full or partial coverage of the costs incurred as a result of legal counseling, preparation of briefs, representation in proceedings before the court, the Public Prosecution Office and the Constitutional Court of Montenegro, as well as in out-of-court settlement proceedings.

Natural persons who cannot, based on their financial standing, afford to exercise the right to access to court without causing harm to the necessary subsistence of themselves or their families are entitled to receive free legal aid.

The right to free legal aid may be exercised by:

- 1) a Montenegrin citizen;
- 2) a person without citizenship (stateless person) who resides legally in Montenegro or a person seeking asylum in Montenegro;
- 3) a foreigner with permanent residence or temporary residence or any other person legally residing in Montenegro;
- 4) any other person in accordance with the ratified international treaties.

The right to free legal aid, without the assessment of financial standing, may be exercised by:

- 1) a beneficiary of family allowance or any other social care benefit, in accordance with the law governing social and child care,
- 2) a child without parental care,
- 3) a person with disability,
- 4) a victim of the criminal offence involving domestic violence or violence in domestic unit and human trafficking.

The person of poor financial standing is entitled to receive free legal aid, while his/her financial standing is estimated on the basis of his/her property and property of his/her family members.

The person of poor financial standing is a person who has no property, while his/her monthly income and the total monthly income of his/her family members does not exceed 30% of the average wage in

Montenegro for one member and 15% of the average wage for every next member.

Family members are marriage or domestic partnership spouses and their children, adopted children and any other relatives living with them in the domestic unit, whom he/she is obligated to support.

The following is not considered property:

- 1) a dwelling in which a person lives, whose surface area amounts to 25 m² for one household member and 10 m² for every next household member, and up to 70 m² maximum;
- 2) objects that have been exempted from enforcement in accordance with the regulations governing civil cases and secured claims;
- 3) personal passenger vehicle of the value equaling two average wages in Montenegro which is determined on the basis of an estimate of the competent tax authority;
- 4) a property generating income which is, under this law, taken into account in determination of financial standing of the applicant filing for free legal aid;

The following is not considered income:

- 1) allowance for care giving and other benefits concerning care, as well as the caregiver allowance,
- 2) child allowance;
- 3) allowance for newborns' equipment;
- 4) costs of transportation to work, allowance received for food during workday (meal allowance) and per diems for business trips;
- 5) scholarships and other entitlements intended for the provision of training and education;
- 6) employment income of persons with disabilities who benefit from institutional care, which is received apart from the criteria applicable on regular employment;
- 7) funds intended for the mitigation of consequences of natural disasters and other accidents;
- 8) allowance for the child in foster care which is received by family of the applicant;
- 9) award of non-pecuniary damage as a result of reduced everyday life activity;
- 10) benefits received on the basis of legal support of children.

TYPES OF FREE LEGAL AID

- legal counseling;
- preparation of briefs;

- representation in court proceedings and in out-of-court settlement proceedings.

Legal counseling includes the provision of legal notification and legal advice. Legal notification is a general notification of rights and obligations that have been prescribed in a specific field, of the procedure for exercising the right and the obligation to make an effort to resolve dispute out of court. The right to legal notification in the same case may be exercised only once.

Preparation of briefs includes preparation of the lawsuit or any other document initiating proceedings, and of the appeal, constitutional complaint or a document initiating procedure for the protection before the European Court of Human Rights.

Representation means taking procedural actions before the court, Public Prosecution Office, Constitutional Court and in out-of-court settlement proceedings.

Free legal aid is NOT provided in:

- proceedings before commercial courts and procedure involving registration of the type of economic activity performed,
- procedure for the award of damages in relation to defamation and insult,
- proceedings initiated on the basis of the lawsuit for reducing the amount of child support where the person who is obligated to pay for the support failed to fulfill such obligation, except if the failure to fulfill such obligation has not been his/her fault.

WHO IS COMPETENT TO GRANT FREE LEGAL AID?

Free legal aid is granted by the basic court, i.e. president of the court or the judge he/she has authorised, in whose territory the applicant has either permanent or temporary residence.

Legal aid services that have been set up in each basic court are responsible for the execution of technical and administrative tasks in the procedure for granting free legal aid.

Applications for free legal aid are filed with the service of the competent court, whereas the service is responsible for providing notifications and advice to all the interested parties regarding possibilities and conditions for exercising the right to free legal aid, while it may also provide legal counseling as a form of free legal aid.