

RODOLJUB ETINSKI*

The Universal Protection of Human Rights and Eastern Europe: Montenegro

- **ABSTRACT:** *Two interrelated factors determine Montenegro's relationship with the universal protection of human rights. First, regaining independence in 2006 with the intent to build a State based on democracy, the rule of law, and human rights. Second, the decision in 2008 to apply for membership in the EU. These two factors synergistically strengthen Montenegro's interest in the universal protection of human rights. Upon reestablishing its independence, Montenegro did not start from a clean slate but also did not inherit a solid foundation regarding human rights. Despite the fact that its predecessor State, Yugoslavia had entered into most UN human rights treaties, the development of human rights was heavily influenced by four decades of socialist self-management. Montenegro succeeded these treaties and acceded new UN treaties in which the predecessor State was not a party. This historical situation required that Montenegro incorporate new treaties into its national law and align it with the development of old UN treaties. Indeed, Montenegro adopted new legislation and inserted several provisions into the Constitution and various laws to give effect to the CRPD in its internal legal system. It also added many new provisions to the Constitution and laws or amended existing ones to align its internal law with the development of older treaties. The process of reforming its internal law to secure the effects of UN human rights treaties in its internal legal system has been ongoing through dialogue with UN Member States via the Human Rights Council and with experts of monitoring human rights bodies. Montenegro submitted its national reports, responded to raised questions, carefully considered all recommendations, and accepted and implemented most of them. It has served two terms as a Member of the Human Rights Council, actively participating in and contributing to its work. Montenegro's activities regarding the universal protection of human rights are integral to the broader reforms leading to its EU membership. The EU Commission has carefully considered and positively evaluated these activities.*

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■ **KEYWORDS:** *human rights, universal protection, monitoring bodies, Montenegro*

1. Introduction

This article is part of a comparative study on the universal protection of human rights in Central and Eastern Europe. Similar studies have been prepared for each country in these regions. To ensure comparability, each text addresses the same set of questions, resulting in an identical structure across all articles. The system of universal protection of human rights consists of UN human rights treaties, UN Human Rights Treaty bodies (monitoring bodies), the UN Human Rights Council, and the activities of State Parties in giving effect to the treaties. The expression 'UN human rights treaties' covers two international covenants and other UN human rights conventions. The dialogue between State Parties and UN Member States through the Human Rights Council, as well as their dialogue with experts of monitoring bodies, is a dynamic source of overall progress in human rights protection. This system does not function in isolation but interacts with the national and regional legal systems.

Information on the succession and accession of Montenegro to UN human rights treaties is provided later in this article. Given the significant role of monitoring bodies as expert mechanisms for the protection of human rights in the Member States, it is important to emphasise at the outset that Montenegro has fully recognised the competence of these bodies in carrying out their monitoring and conciliatory functions. The role of such monitoring bodies is particularly crucial in the absence of a World Court of Human Rights.

Montenegro applied for EU membership in 2008, and accession negotiations commenced in June 2012. A key task for Montenegro in the accession process is to secure the European standard of the rule of law and enhance the protection of human rights. UN human rights treaties and their associated monitoring bodies have played a significant role in advancing human rights protection in Montenegro. Indeed, EU institutions have evaluated the implementation of UN human rights treaties within Montenegro's domestic law and the dialogue between Montenegro and these monitoring bodies in their reports on the country's progress in human rights protection. Consequently, the interaction between Montenegro and universal human rights protection is not an isolated process; rather, it is integral to the accession process, as universal standards of human rights are an integral part of the European system of human rights protection. Reliable evidence of Montenegro's progress in human rights protection, including significant advancements in universal human rights protection, is provided in the positive Report on the

Fulfilment of Interim Benchmarks (IBAR) in Chapters 23 and 24—relating to the rule of law and human rights—issued on 26 June 2024.

This article begins with a brief review of the historical development of human rights in Montenegro, tracing their evolution from the early establishment of the Montenegrin statehood to its reestablishment of independence in 2006. However, the primary focus is on the developments following 2006. It then examines the relationship between Montenegro and the UN from a human rights perspective. The article proceeds with information on Montenegro's succession to and accession of UN human rights treaties, followed by an analysis of how the provisions of these treaties are reflected in the Constitution and statutory laws of Montenegro. In the text, the term 'laws' refers to statutory laws passed by the Assembly of Montenegro. Some of the major legislative processes in Montenegro influenced by UN human rights treaties will be highlighted. The text concludes with a review of the *Hajrizi Dzemajl et al. v. Yugoslavia* case before the Committee against Torture. This case was chosen for two reasons; first, it is of general importance to the protection of Roma people; second, since Montenegro re-established its independence in 2006, it has not had any cases brought before monitoring bodies, except one which was discontinued.¹ The *Hajrizi Dzemajl* case occurred when Montenegro was a federal unit of the Federal Republic of Yugoslavia, but it exclusively pertains to acts by the Montenegrin authorities. Due to space considerations, abbreviations will be regularly used. Full information on national legal sources and the literature will be provided at the end of the text.

2. The historical development of human rights in Montenegro: A contextual introduction

The historical development of human rights in Montenegro has been influenced by various internal, regional, universal political, and ideological factors. The European great powers and the Ottoman Empire recognised Montenegro as an independent State at the Congress of Berlin by Article 26 of the Treaty of Berlin on 13 July 1878. Article 27 of the Treaty obliged Montenegro to prohibit discrimination based on religion regarding civil and political rights, admission to public employment, functions and honours, or the exercise of various professions. This marked the beginning of a modern independent State and the protection of religious minorities. However, Montenegro enjoyed significant autonomy under the Ottoman Empire, and its first legislative acts were adopted at the end of the eighteenth century and in the first half of the nineteenth century. Human rights were systematically protected for the first time in Montenegro by the Constitution

1 Decision of the Committee against Tortures concerning communication No. 970/2019, 30 December 2020. *M.B. v. Montenegro*, CAT/2020/970/2019, 30 December 2020.

of 1905. The first period of modern independent development ended with the establishment of the Kingdom of Serbs, Croats, and Slovenes, later known as Yugoslavia, in 1918. Montenegro remained part of Yugoslavia until 2006. Since 1946, Montenegro has been a federal unit within the Yugoslav Federation and, since 2003, a member of the State Union of Serbia and Montenegro. Following the reestablishment of its independence in 2006, Montenegro applied for EU membership in 2008 and began accession negotiations in 2012.

In sum, several periods of human rights development can be distinguished: the period of independence before 1918; the period of the Kingdom of Serbs, Croats, and Slovenes (later Yugoslavia) during 1918–1945; the period of socialist Federal Yugoslavia during 1945–1992; and the period of post-socialist Federal Yugoslavia, followed by the State Union of Serbia and Montenegro. These periods will be concisely reviewed below.

■ 2.1. *Period of independence before 1918*

The most significant legal act of this period was the Constitution pronounced by Prince (later King) Nikola in 1905. Prince Nikola was an enlightened absolutist. Human rights and freedoms were exposed in Part 14 of the Constitution. Prominent academician Mijat Šuković noted that, unlike other European constitutions, where human rights were set out in the initial parts, placing them in the 14th part of the Montenegrin Constitution seems inappropriate. However, he observed that their value should be appreciated based on content rather than placement. He said that the list of constitutional rights of Montenegrin citizens, specified in Articles 196–218 of the Constitution ‘is consistent in scope and content with the standard lists of constitutionally guaranteed rights of citizens in culturally and economically developed democratic European states at that time.’² Šuković referenced the constitutions of Belgium, Greece, Norway, Romania, Serbia, and Switzerland. The Constitution guaranteed the following rights and principles: equality before the law, right to liberty, no punishment without law, right to a fair trial, no capital punishment for political crimes except for attacks on the prince and his family, right to respect of home, no confiscation of property as a general penalty, right to property, freedom of conscience and religion, freedom of expression, freedom of the press, right to respect for communication, freedom of assembly and association, right to an effective remedy, right to renounce Montenegrin citizenship, rights of foreigners, and no extradition for political crimes. The provisions were concise and clear. The right to free elections is governed by Articles 48–50 and 52–54 of the Constitution. Article 142 declared that the judiciary in Montenegro is independent. According to Article 145, all judges were appointed by the Lord Prince (Knjaz Gospodar). They could not be transferred, dismissed, or retired except in accordance with the Law on Judges. Article 148 stated that no court or

2 Šuković, 2006, p. 58.

judicial authority could be established other than by law. According to Article 146, the courts judged and resolved disputes according to the laws of the State. The Constitution thus provided a solid foundation for the development of the rule of law and the protection of human rights. Unfortunately, it came late and had a short lifespan.

Several other legal acts preceding the Constitution guaranteed some human rights as well. The first codes, 'Stega' (Oath) from 1796 and 'Zakonik obšči crnogorski i brdski' (the General Code of Montenegro and Mounties) from 1798 and 1803, codified pre-existing customary law.³ These codes protected life and security by prohibiting arbitrary trials and arbitrary deprivation of liberty. They also protected individual and communal property.⁴ The 'Opšti zemaljski zakonik', 'Danilov zakonik' (the General Land Code, the Code of Danilo) from 1855 made further progress: it protected the spiritual and physical integrity of individuals, including honour, property, life, and liberty.⁵ The Code guaranteed equal rights for foreigners and members of religious minorities.⁶ The 'General Property Code for the Principality of Montenegro' (Opšti imovinski zakonik za Knjaževinu Crnu Goru) of 1888 governed property rights. Valtazar Bogišić, the author of the Code, combined Montenegrin tradition derived from customary law with modern European achievements in civil law. Article 16(1) protected the right to property, stating: 'Everyone's property is sacred and inviolable.'⁷

■ 2.2. *Period of the Kingdom of Serbs, Croats, and Slovenians, respectively Yugoslavia, during 1918–1945*

Montenegro was a region within the Kingdom of Serbs, Croats, and Slovenes until 1929, when the Kingdom was renamed Yugoslavia, and Montenegro became a province, called 'Zetska banovina.' During this period, Montenegro did not have separate competencies regarding the protection of human rights. Two constitutions were adopted: the first in 1921 and the second in 1931. Both constitutions dedicated Chapter 2 to fundamental civil rights and duties and Chapter 3 to social and economic provisions. The Kingdom inherited diverse legal systems and traditions from its integrated regions and faced two primary challenges: territorial disintegration and social revolution. These factors influenced the constitutional elaboration of human rights. For instance, Article 109 of the 1921 Constitution provided that the family and inheritance disputes of Muslims would be judged by State Sharia judges. Article 4 of the same Constitution abolished all nobility and titles acquired by birth. The right to association and assembly was supplemented in the 1931 Constitution with the provision: 'There can be no association on a

³ Vukčević and Čupić, 2024, p. 29.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Opšti imovinski zakonik za knjaževinu Crnu Goru, 2022, p. 17.

religious, tribal, or regional basis for party-political purposes, as well as for the purposes of corporal education'. This aimed to mitigate rising ethnic and religious tensions in the Kingdom. Surprisingly, Chapter 3 on social and economic provisions was radically shortened in the 1931 Constitution, which was not an appropriate constitutional response to the rising social tensions. The 1921 Constitution envisioned the Kingdom as a socially oriented state based on the rule of law. Instead of fostering this orientation, the 1931 Constitution sought solutions elsewhere, which ultimately resulted in a social revolution at the end of the Second World War.

■ 2.3. *Period of the socialist federal Yugoslavia, 1945–1992*

Montenegro, along with other republics that formed the federal units of Yugoslavia, protected human rights through their own constitutions. However, there were no significant differences between the Federal Constitution and the Republican Constitutions regarding human rights protection. All of them reflected the tensions between a new socialist ideology and standard civil and political rights. The ideological influence on human rights was not immediately apparent in the 1946 Federal Constitution and the corresponding Republican Constitutions. However, this tension emerged during the discussions on the draft of the Universal Declaration of Human Rights at the UN General Assembly in December 1948. A Yugoslav delegate stated that civil and political rights had played a role in the demolition of feudalism and that the time had come for social rights. Consequently, the new ideology shifted emphasis to social rights. The impact of this new ideology on human rights became evident in the 1963 Federal Constitution. Chapter 3 of the 1963 Constitution, dedicated to freedoms, rights, and duties, begins with Article 32, which states:

The freedoms and rights of man and citizen are an inalienable part and expression of socialist and democratic relations protected by this Constitution, in which man is freed from all exploitation and arbitrariness and through personal and joint work creates conditions for all-round development and free expression and protection of his personality and for the realization of human dignity.

A distinctive feature of the impact of socialist ideology on human rights in the Yugoslav context was the right to socialist self-management. Despite this ideological influence, all federal and republican constitutions included basic civil and political rights. Yugoslavia ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1967, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1971, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1982,

and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment (CAT) in 1992. It did not accept optional protocols that establish the right to individual communication. Although political rights, particularly the right to expression, were recognised in the constitutions, they were severely restricted in practice. The concept of the rule of law was replaced by the concept of the rule of the labour class.

■ **2.4. *Period of post-socialist Federal Yugoslavia, respectively the State Union of Serbia and Montenegro***

In the late 1980s, the two main ideologies that had underpinned socialist, federal Yugoslavia – socialist self-management and unity and brotherhood – began to fail. The ideology of unity and brotherhood was replaced by a tragic armed conflict, which started first in Croatia in 1991 and, then, in Bosnia and Herzegovina in 1992. Four republics – Bosnia and Herzegovina, Croatia, Slovenia, and North Macedonia – separated, but Montenegro and Serbia remained together in the Federal Republic of Yugoslavia (FR Yugoslavia), which was established in 1992. The federation was transformed into the State Union of Serbia and Montenegro in 2003. Both the FR Yugoslavia and the Republic of Montenegro adopted new constitutions in 1992. The Federal Constitution was replaced by the Constitutional Charter of 2003, which included the Charter on Human and Minority Rights and Liberties. The 1992 constitutions of the Federation and Montenegro addressed human rights, but unlike previous practice, the constitutional texts on human rights were not identical. Instead, they were influenced by the radical change of the political and economic system, transitioning from a system of socialist self-management to political pluralism, democracy, and a market economy. The constitutions reinstated standard civil and political rights. Human rights protection was particularly advanced by the adoption of the 2003 Charter on Human and Minority Rights and Liberties. Unfortunately, the Charter was in force for only three years. Yugoslavia accessed to the 1966 Optional Protocol to the ICCPR and the 1989 Second Optional Protocol to the ICCPR on the abolition of the death penalty in 2001.

■ **2.5. *Concluding remarks on the historical background of human rights in Montenegro***

If one considers that the systematic protection of human rights in Montenegro began with the 1905 Constitution, the protection has lasted for about 120 years. In historical terms, this is not a long period. A particular problem is the lack of continuity in the protection of human rights. The 1905 Constitution, which could have provided a solid foundation for the development of human rights protection and the rule of law, was in force for only 13 years. It was replaced in the new political environment of the Kingdom of Serbs, Croats, and Slovenes by the 1921 Constitution, which also held promise regarding human rights but was in force for only 10 years. The 1931 Constitution of Yugoslavia marked a decline in human

rights protection and a significant break occurred in 1945 with the victory of the socialist revolution.

The political system of socialist self-management introduced something new on the world stage but undermined the fundamental basis of human rights – the rule of law. The concept of the rule of law was replaced by the concept of the rule of the labour class. This deviation from the standard development of human rights protection lasted over 40 years, accounting for one-third of the modern development of human rights protection in Montenegro. Consequently, when Montenegro reestablished its independence in 2006, it did not inherit a solid foundation for human rights protection or strong institutions. One of Montenegro's main tasks was to build these foundations and institutions in the process of EU accession. A symbol of the return to the constitutional foundations of 1905 is the fact that the parts dedicated to human rights in both the 1905 Constitution and the 2007 Constitution begin with a clause on equality before the law, which is one of the bases of the rule of law.

3. Relationship between Montenegro and the UN from a human rights perspective

■ 3.1. *The relationship between the Government of Montenegro and the UN Human Rights Council and monitoring bodies*

Montenegro engaged with the UN on human rights primarily through the Human Rights Council. The country places great value on international dialogue and cooperation for the promotion and protection of human rights and freedoms facilitated by the Council. Montenegro has been a member of the Council for the 2013–2015 and 2022–2024 terms. It has submitted four national reports to the Council⁸ and has also provided mid-term reports on the fulfilment of recommendations received in the previous cycles.⁹ The first national report was submitted by the Minister for Justice, who informed the Council about the comprehensive legal system reforms that began when Montenegro gained independence in 2006. The purpose of these reforms was to build a state 'based on the values of freedom, peace, tolerance, respect for human rights and freedoms, multiculturalism, democracy, and the rule of law'.¹⁰ The delegation highlighted that the new Constitution included human

8 National reports were submitted to the Human Rights Council in 2008, 2012, 2017, 2023.

9 The mid-term report of Montenegro on the implementation of recommendations were received during the second cycle of Universal Periodic Review, in 2015. The mid-term report of Montenegro on the implementation of recommendations was received during the third cycle of the Universal Periodic Review, 2021.

10 Report of the Working Group on the Universal Periodic Review: Montenegro (2009), Human Rights Council, 6 January 2009, A/HRC/10/74, p. 3.

rights and freedoms based on international instruments to which Montenegro had acceded as an independent state. The importance of minority rights and combating corruption and organised crime were also emphasised.¹¹ In the subsequent three cycles, Montenegro was represented in the Council at the ministerial level by the Minister for Human and Minority Rights. This high level of representation expresses the significance that Montenegro attributes to its cooperation with the Council.

Montenegro accepted and fulfilled most of the recommendations of the Council, which primarily focused on the ratification of UN human rights treaties, their incorporation into national law, and the adoption of national legislative acts. In the later cycles, the recommendations shifted towards improvements in practices, policies, and national institutions. The recommendations from the first cycle included, among other things: the ratification of the Optional Protocol to the CAT and the establishment of an effective national preventive mechanism accordingly; the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol; the timely submission of reports to the relevant monitoring bodies; the maintenance of efforts to reach higher human rights standards concerning freedom of the media, the functioning of the judiciary, and the situation of refugees; incorporating international human rights treaties into national law; and the adoption of a general anti-discrimination act.¹²

Montenegro has maintained an ongoing dialogue and cooperation with monitoring bodies. Although there have been occasional delays, it regularly submits periodic reports, responds to issues raised prior to reporting, participates in dialogue, and fulfils recommendations. In 2014, one of the first recommendations from the Human Rights Committee was for Montenegro to raise awareness of the Covenant among judges, lawyers, and prosecutors to ensure that its provisions are considered by national courts. The Human Rights Committee was informed that the Constitution allows international human rights treaties to be invoked directly in court, but it noted that there were only a small number of cases where the provisions of the Covenant had been considered.¹³ Indeed, the courts in Montenegro, similar to those in many other State Parties to the European Convention on Human Rights (ECHR), have more frequently invoked the ECHR and the case law of the European Court of Human Rights (ECtHR) than the ICCPR and the practice of the Human Rights Committee. This discrepancy arises from the different functions of the Committee and the ECtHR. The impact of the UN human rights treaties and monitoring bodies on internal legal systems is primarily realised through recommendations that result from monitoring the incorporation of these treaties into national law and from aligning national provisions with them, rather

11 Ibid.

12 Ibid., pp. 16–17.

13 Concluding observations on the initial report of Montenegro, Human Rights Committee, 21 November 2014, CCPR/C/MNE/CO/1, p. 2.

than from the direct application of the treaties and the invocation of views of monitoring bodies by national courts.

■ 3.2. *The EU Commission, NGOs, and literature on the relation of Montenegro and UN from the perspective of human rights*

The European Commission has reiterated in its last three progress reports on Montenegro's EU accession that the country continues to maintain regular dialogue and cooperation with international human rights organisations, monitoring bodies, the United Nations, and the Council of Europe.¹⁴ In the 2022 and 2023 reports, the Commission stated that, overall, Montenegro has fulfilled its obligations of international human rights instruments and legislation.¹⁵ However, the Commission also noted delays and partial fulfilment of the recommendations from the Human Rights Council and other monitoring bodies. In its 2021 report, the Commission highlighted that Montenegro did not accept amendments to the Criminal Code aimed at eliminating the statute of limitations for criminal offenses of torture and other forms of ill-treatment, despite the recommendations of the 2018 UN Universal Periodic Review.¹⁶ The same report noted that Montenegro's legislation was not aligned with the CRPD, particularly regarding the definition of disability and that Montenegro was in the process of preparing a new Law on professional rehabilitation and employment.¹⁷ In the 2022 report, the Commission stated that the UN Committee against Torture concluded that Montenegro had only partially implemented its 2014 recommendations of strengthening legal safeguards for detainees.¹⁸ The 2023 report mentioned that Montenegro delayed submitting reports on the ICESCR and ICERD.¹⁹

The NGOs in Montenegro are approaching the UN human rights treaties in various ways. In its 2010–2011 report on human rights in Montenegro, the *Human Rights Action* NGO, based in Podgorica, began the section on the relationship between human rights treaties and Montenegro by examining the status of UN human rights treaties within Montenegrin domestic law, the right to communicate with monitoring bodies, and Montenegro's reporting obligations to these bodies.²⁰ Additionally, two other NGOs, *Severna zemlja* from Berane and *Ekvivalent* from Podgorica, published an *Informer* on the Rights of Persons with Disabilities in

14 Montenegro Report 2021, European Commission, Strasbourg, 19 October 2021, SWD(2021), 293/final/2, p. 28. Montenegro Report 2022, European Commission, Brussels, 12 October 2022, SWD(2022), 335/final p. 33. Montenegro Report 2023, European Commission, Brussels, 18 November 2023, SWD(2023), 694 final, p. 39.

15 Montenegro Report 2022, p. 33. Montenegro Report 2023, p. 39.

16 Montenegro Report 2021, p. 29.

17 Ibid., p. 35.

18 Montenegro Report 2022, p. 34.

19 Montenegro Report 2023, p. 39.

20 Ljudska prava u Crnoj Gori 2010–2011, 2011, pp. 58–60.

Traffic, succinctly conveying the essence of the CRPD.²¹ NGOs also monitor the implementation of recommendations issued by monitoring bodies to Montenegro. In 2022, Human Rights Action reported that Montenegro had not fulfilled the recommendation of the Committee against Torture, initially issued in 2014 and reiterated in 2022, that criminal offenses of ill-treatment should not be subject to statutes of limitations.²² Furthermore, NGOs have actively contributed to the implementation of certain recommendations. For instance, several NGOs have organised educational, recreational, and vocational activities for prisoners.²³

Montenegro's activities in the Human Rights Council have also been noted in literature. For instance, Istvan Lakatos emphasised several key activities, such as Montenegro's participation in the cross-regional core group with the USA, UK, Mauritius, and North Macedonia on resolutions concerning the human rights situation in Sri Lanka and South Sudan.²⁴ Lakatos also highlighted Montenegro's active stance on issues such as early marriage, children of parents on death row, and civil society.²⁵ According to this author, Montenegro has organised several side events on sensitive topics, including human rights situations in Ukraine, Syria, the Maldives, and Sierra Leone.²⁶

While the universal protection of human rights is not the primary focus of Montenegrin writers, it holds a significant place in the Montenegrin legal literature. Without the pretension of exhaustivity, some important studies are as follows. Nebojša Vučinić, professor at the Faculty of Law of the University of Montenegro and former judge of the ECtHR, discussed universal protection of human rights in his textbook, emphasising the role of general comments from monitoring bodies in defining the content of human rights guaranteed by UN treaties.²⁷ Ivana Jelić, professor at the same faculty, former member and Vice President of the Human Rights Committee (2014–2018) and current judge, Section President and Vice President of the ECtHR, referenced the ICCPR in her several works on political rights of minorities in Montenegro.²⁸ In their textbook on human rights, Vukčević and Čupić also referenced UN human rights treaties, particularly in their discussions of international sources.²⁹ An analysis of the international bases of the freedom of religion in Montenegro by Nikola Šaranović includes references to the Universal Declaration of Human Rights and the ICCPR.³⁰ Jelena Džankić explored policies and their implementation regarding the protection of minorities in

21 Informator o pravima lica sa invaliditetom, 2020, pp. 4–5.

22 Gorjanc Prelević and Malović, 2022, p. 36.

23 Montenegro Report 2022, p. 35.

24 Lakatos, 2017, p. 6.

25 Ibid.

26 Ibid.

27 Vučinić, 2001, p. 33.

28 Jelić, 2004, p. 142; Jelić, 2020, p. 96; Jelić and Mühler, 2022, p. 17; Jelić, 2024, p. 370.

29 Vukević and Čupić, 2024, p. 91.

30 Šaranović, 2018, p. 429.

Montenegro, focusing on Article 27 of the ICCPR.³¹ Writing on a similar subject matter, Bojan Božović and Nikola Zečević explored the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.³² Kosana Beker analysed the CRPD in her study on deprivation of legal capacity in Montenegro.³³ Additionally, Ivana Jabučanin and Ana Stojanovski referenced the Convention on the CRC in their article on parental care and children's rights.³⁴

■ 3.3. *Concluding remarks*

Montenegro has established mutually beneficial cooperation with the UN Human Rights Council and various monitoring bodies. By serving two terms as a member of the Human Rights Council, Montenegro actively contributed to the Council's activities. Concurrently, Montenegro's legislation has greatly benefited from the recommendations put forth by the monitoring bodies. These recommendations have catalysed significant advancements in national legislation aimed at enhancing human rights protections. Despite occasional delays, Montenegro consistently submitted reports to these bodies within the designated timelines, diligently considered all recommendations received, and successfully implemented most of them.

4. Succession and accession of Montenegro to UN human rights treaties

Montenegro is a State Party to all UN human rights treaties listed in Chapter IV under the title 'Human Rights' of the Register of Multilateral Treaties and deposited with the Secretary-General; this is available on the UN Treaty Collection webpage, except the International Convention on the Protection of the Rights of All Migrant Workers and Members Their Families (ICRMW) and the 1992 Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.³⁵ Montenegro is also a State Party to the treaties listed in Chapter V of the Register relating to refugees and stateless persons.³⁶

Montenegro became a party to most UN human rights treaties by succeeding to the treaties that had previously been legally binding on the State Union of Serbia

31 Džankić, 2012, p. 43.

32 Božović and Zečević, 2021, p. 67.

33 Beker, 2017, p. 10.

34 Jabučanin and Stojanovski, 2021, p. 102.

35 United Nations Treaty Collection [Online]. Available at: https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en (Accessed: 6 August 2025).

36 The list includes the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the 1954 Convention Relating to the Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

and Montenegro. The background and legal context of Montenegro's succession to UN human rights treaties are as follows. On 3 June 2006, the National Assembly of the Republic of Montenegro adopted the Decision on the Declaration of Independence of the Republic of Montenegro (2006 Declaration of Independence) and the Declaration of the Independent Montenegro.³⁷ Point 3 of the 2006 Declaration of Independence affirmed that the Republic of Montenegro would apply and assume responsibility for the international treaties and agreements concluded or acceded to by the State Union of Serbia and Montenegro, insofar as they pertained to Montenegro and aligned with its legal order. Montenegro was admitted to the United Nations on 28 June 2006. Following this admission, the Government of Montenegro sent a letter dated 10 October 2006 (the 2006 instrument of succession) to the UN Secretary General, which was received on 23 October 2006, being accompanied by a list of multilateral treaties deposited with the Secretary General. In this letter, the Government notified the UN Secretary General that Montenegro had decided to succeed the treaties to which the State Union of Serbia and Montenegro had been a party or signatory, as listed in the attached annex, and undertook to implement these treaties starting from 3 June 2006, the date when Montenegro assumed responsibility for its international relations. It further mentioned that Montenegro did not maintain the reservations, declarations, or objections previously made by the State Union of Serbia and Montenegro.³⁸

1. *1951 Convention Relating to the Status of Refugees*

Montenegro succeeded to the 1951 Convention Relating to the Status of Refugees on 10 October 2006.³⁹ The succession was performed through the adoption of the 2006 Declaration of Independence by the Assembly and the deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

2. *1966 International Covenant on Civil and Political Rights*

Montenegro succeeded to the ICCPR on 23 October 2006.⁴⁰ The succession process involved the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

³⁷ O.J. R. Montenegro No. 36/2006, 5. 06. 2006.

³⁸ United Nations Treaty Collection – Multilateral Treaties Deposited with the Secretary-General [Online]. Available at: https://treaties.un.org/pages/HistoricalInfo.aspx?clang=_en#Montenegro (Accessed: 6 August 2025).

³⁹ Convention relating to the Status of Refugees, Geneva, 28 July 1951 https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en (Accessed: 6 August 2025).

⁴⁰ International Covenant on Civil and Political Rights, New York, 16 December 1966 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (Accessed: 6 August 2025).

3. *1966 International Covenant on Economic, Social and Cultural Rights*

Montenegro succeeded to the ICESCR on 23 October 2006,⁴¹ following the same succession procedure: the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

4. *1965 International Convention on the Elimination of All Forms of Racial Discrimination*

Montenegro succeeded to the CERD on 23 October 2006.⁴² The process was the same, with the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

5. *1979 Convention on the Elimination of All Forms of Discrimination Against Women*

Montenegro succeeded to the CEDAW on 23 October 2006.⁴³ The succession process was completed through the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

6. *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Montenegro succeeded to the CAT on 23 October 2006,⁴⁴ through the same succession mechanism involving the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the Secretary General by the Government.

7. *1989 Convention on the Rights of the Child*

Montenegro succeeded to the CRC on 23 October 2006.⁴⁵ The process involved the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the UN Secretary General by the Government.

41 International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en (Accessed: 6 August 2025).

42 International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en (Accessed: 6 August 2025).

43 Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en (Accessed: 6 August 2025).

44 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en (Accessed: 6 August 2025).

45 Convention on the Rights of the Child, New York, 20 November 1989 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (Accessed: 6 August 2025).

8. *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Montenegro succeeded to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by succession to the signature of Serbia and Montenegro from 11 November 2004. This succession was formalised on 23 October 2006,⁴⁶ following the adoption of the 2006 Declaration of Independence by the Assembly and deposit of the 2006 instrument of succession with the Secretary General by the Government. However, Montenegro has not yet ratified this Convention.

9. *2006 Convention on the Rights of Persons with Disabilities*

Montenegro signed the CRPD on 27 September 2007 and the instrument of ratification was deposited on 2 November 2009. The ratification process was completed following the constitutional requirements outlined in Articles 82(1, 2, and 17) and 91(1) of the Constitution. The Assembly of Montenegro adopted the Law on the Ratification of the 2006 Convention on 15 July 2009,⁴⁷ with the instrument of ratification subsequently deposited with the UN Secretary General on 2 November 2009.⁴⁸

5. Provisions of UN human rights treaties, as reflected in the Constitution and laws of Montenegro

■ 5.1. Investigative framework

Montenegro became a party to most UN human rights treaties, as previously mentioned. By accepting these treaties, Montenegro undertook an international obligation to include the effects of their provisions in its national legal system. This obligation is fulfilled by numerous provisions of the Constitution and laws. The foundational obligation of State Parties to almost all UN human rights treaties to respect and ensure to all individuals under their jurisdiction the rights guaranteed by the treaties, such as that in Article 2(1) of the ICCPR, Article 2(1) of the CRC, or Article 4(1) of the CRPD, is satisfied through Article 6(1) of the Constitution, which states: 'Montenegro guarantees and protects rights and freedoms'.

46 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en (Accessed: 6 August 2025).

47 O.J. Montenegro-International Treaties, No. 2/09.

48 Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en (Accessed: 6 August 2025).

The division of competences between the Constitution and laws concerning human rights is governed by Article 16(1) of the Constitution. This article stipulates that the laws, in accordance with the Constitution, regulate the *way* of the realisation of human rights and freedoms where necessary. This means that all fundamental human rights are guaranteed by the Constitution, but their methods of realisation are specified by law. Distinction between the core of a human right and its method of realisation is delicate and will not be considered here. For the subject-matter of this article, it is relevant that most textual segments of the provisions of UN treaties correspond with Constitutional provisions, some with Constitutional provisions and laws, and some only with laws. In other words, some textual segments of international provisions are not reflected in the Constitution, but only in the laws.

There are two primary modes through which international human rights provisions are effectuated in Montenegrin legal system. The first are general provisions in the Constitution that ensure the direct application of international human rights provisions within the internal legal order. The second mode operates indirectly by transferring the key components of international human rights provisions in the Constitution and/or national laws. The direct effect of UN treaties will be discussed in the subsequent section. The transfer of key components of international human rights provisions into national law does not entail the extensive adoption of their exact wording. Instead, it involves aligning certain segments of the national provisions with corresponding segments of the international provisions. The Montenegrin Constitution and laws do not replicate the entire text of UN human rights treaties for several reasons, as follows. First, Montenegro's legal framework must accommodate not only UN human rights treaties but also regional agreements, such as the ECHR. Given Montenegro's ongoing accession to the EU, the country is required to harmonise its legal system with EU standards, which sometimes exceed the minimum standards set by international human rights provisions. Second, certain international provisions, particularly those of the ICESCR, have a programmatic nature and necessitate detailed implementation in the national legislation. This required contextual adaptation rather than direct textual transfer. Moreover, Montenegro may provide higher standards of protection than those outlined in the international treaties. However, challenges may arise if an internal provision reflecting an international provision fails to fully realise its intended effect due to textual differences. Montenegro addressed this issue through constitutional provisions that uphold the direct applicability and supremacy of international treaties, which will be explored in the subsequent section.

■ 5.2. *Supremacy and direct effect of international human rights treaties in the national legal system of Montenegro*

The relationship between international treaties on human rights, including UN treaties, and national law in Montenegro is governed by Articles 17 and 9 of the Constitution. Specifically, Article 17(1) stipulates that rights and freedoms shall be exercised on the basis of the Constitution and ratified international treaties. This provision must be understood in conjunction with Article 9, which states that ratified and published international treaties, along with the generally accepted rules of international law, form an integral part of the internal legal order, have supremacy over national legislation, and are directly applicable when they regulate relations differently from domestic laws. The supremacy is under control of a specific principle of human rights treaties, as stated for example in Article 5(2) of the ICCPR, that is, that the treaties will not derogate the higher standard of a human rights envisaged by national law or another international treaty. If Montenegrin provision regulates relations differently than a UN treaty, but provides higher standard of protection, it will not be derogated by the treaty.

However, the textual formulation of Article 9 is not without challenges. One issue is that, while this article establishes the supremacy of international treaties over national legislation, it does not explicitly state supremacy over the Constitution itself. Nebojša Vučinić has cautioned that this formulation could lead to practical issues if an international treaty, particularly the ECHR, contradicts the Constitution.⁴⁹ Another concern, raised by Vučinić, is that Article 9 only provides for the direct application of international treaties when they regulate matters differently than domestic legislation. This creates ambiguity when national law does not address a particular human rights issue. Vučinić suggested that legislation, particularly a law concerning the Constitutional Court, should clarify these ambiguities.⁵⁰ However, the Law on the Constitutional Court has exacerbated this issue. Namely, Article 30(2) of the Law allows for constitutional appeals only against violations of the rights or freedoms guaranteed by the Constitution, thereby narrowing the scope of Article 17(1) which allows for the exercise of rights also based on ratified international treaties.

Despite these challenges, the prevailing interpretation in Montenegro holds that international human rights treaties are directly applicable when domestic law does not cover a disputed matter; this interpretation has gained general acceptance. The Constitutional Court of Montenegro has adopted this approach, applying the provisions of the ECHR as interpreted by the ECtHR in cases where the Constitution does not provide specific guidance. The EU Commission has praised the Constitutional Court for its application of ECtHR case law.⁵¹ This interpreta-

49 Vučinić, 2008, p. 36.

50 Ibid.

51 Montenegro Report 2021, p. 29.

tion of Article 9 of the Constitution is also followed by NGOs. For instance, in its Handbook on rights and obligations related to police work, Human Rights Action notes that Montenegrin law lacks a remedy concerning the determination of the exact moment of deprivation of liberty. This is important because the Code on Criminal Procedure obliges the police to bring a person deprived of their liberty before the State prosecutor no later than 24 hours from the moment of deprivation. Nevertheless, it advises that individuals deprived of liberty can appeal against police notifications regarding their detention based on Article 9(4) of the ICCPR and Article 5(4) of the ECHR.⁵²

The mechanism of supremacy and the direct effect of human rights treaties in Montenegro's internal law effectively addresses the potential issues stemming from incomplete textual transfer of international provisions into national legislation. In cases where domestic law is silent on a human rights issue, individuals can invoke international provisions before the Montenegrin courts that regulate the matter, thereby ensuring the comprehensive effect of these provisions in the country's legal system. This approach mitigates the concerns raised by Vučinić and others that the incomplete textual transfer of international provisions can result in incomplete effects in Montenegrin law. However, this principle applies to most provisions of UN human rights treaties but is not general. Certain provisions, such as some of the ICESCR, lack the precision necessary for direct invocation before the national courts and require specific implementation through national legislation. Consequently, these provisions will not produce direct effects in Montenegro's legal system.

■ 5.3. *Common provisions of the Constitution regarding human rights*

Relevant provisions of the Constitution and laws will be examined to identify the components of the provisions of UN treaties that are incorporated within them. This examination aims to determine how these treaties are reflected in domestic law. The analysis will adhere to the structure of the second part of the Constitution (Articles 17–81), which is devoted to human rights. This part is divided into six sections: 1) common provisions, 2) personal rights and freedoms, 3) political rights and freedoms, 4) economic, social, and cultural rights and freedoms, 5) specific minority rights, and 6) the protector of human rights. The common provisions (Articles 17–25) address issues of equality and non-discrimination, legal remedies and assistance, local self-government, and the limitation of human rights.

5.3.1. *Equality and non-discrimination*

The provisions on equality and non-discrimination are outlined in Articles 8, 17(2), 18, and 19 of the Constitution. These provisions are further developed in the Law on Gender Equality and the Law on the Prohibition of Discrimination.

52 Gorjanc-Prelević, 2024, p. 21.

Additional provisions on equality and non-discrimination can be found in other laws, such as Article 3(2) of the Law on Courts, Article 39(2) of the Law on Minorities Rights and Freedoms, Articles 8–13 of the Labour Law and Article 5 of the Law on the Professional Rehabilitation and Employment of Persons with Disabilities. The Criminal Code defines racial and other forms of discrimination as criminal offenses in Article 443.

The principle of equality is elaborated in Articles 17(2), 18, and 19 of the Constitution, which include equality before the law, gender equality, and equal protection of rights and freedoms. Similarly, the principle of equality before the courts is stated in Article 3(2) of the Law on Courts. These provisions correspond to Articles 3, 14, and 26 of the ICCPR; Article 3 of the ICESCR; Article 5 of the ICERD; Article 2(a) of the CEDAW; and Article 5 of the CRPD. Key components of these international provisions, such as ‘the equal right of men and women’, ‘equality before the courts’, and ‘equality before the law’, are integrated in the enumerated Montenegrin provisions.

The remaining national provisions address the prohibition of discrimination. The fundamental provision is laid out in Article 8 of the Constitution, which prohibits direct and indirect discrimination on any grounds and permits positive measures. The texts of general and specific provisions on the prohibition of discrimination in laws incorporate elements from various sources, including the case law of the ECtHR, UN human rights treaties, and EU anti-discrimination directives. The primary legal prohibition is articulated in Article 2 of the Law on the Prohibition of Discrimination, which forbids discrimination on any ground, provides a general definition of discrimination, and includes definitions of direct and indirect discrimination. The general definition includes terms such as ‘making legal and factual differences’, ‘unequal treatment’, ‘exclusion’, ‘restriction’, ‘giving priority’, and a comprehensive list of grounds for discrimination. The definitions of direct and indirect discrimination are heavily influenced by EU anti-discrimination directives. The law also defines specific forms of discrimination, including harassment and sexual harassment, segregation, hate speech, discrimination in the use of public facilities, discrimination in access to goods and services in both public and private sectors, and discrimination based on health, age, race, and disability. The above Montenegrin provisions effectively incorporate the provisions of UN treaties prohibiting discrimination, including Articles 20(2) and 26 of the ICCPR, Article 2(2) of the ICESCR, Articles 1 and 4 of the ICERD, Articles 1 and 4 of the CEDAW, Article 2 of the CRC, and Article 2 of the CRPD.

5.3.2. *The right to effective remedy*

Article 20 of the Constitution guarantees the right to effective remedy, stating that everyone shall have the right to legal remedy against a decision that affects their rights or legally based interests. This provision partially reflects various UN treaties provisions, including Article 2(3)(a) of the ICCPR and Article 6 of the ICERD.

However, Article 20 limits the scope of these international provisions by confining the right to challenge decisions, thereby excluding other acts that could violate human rights.

The right to effective remedy is further elaborated in Article 22 of the Law on the Prohibition of Discrimination, which grants the right to petition the Ombudsman, and in Article 24 of the Law on the right to judicial protection. These articles restrict the right to an effective remedy to acts of discrimination. Additionally, Article 177 of the Criminal Code classifies the prevention of the use of the right to an effective remedy as a criminal offense.

5.3.3. Restriction of human rights and freedoms and derogation of rights in time of public emergency

Article 24 of the Constitution specifies the conditions under which human rights can be restricted. By referring to legality and permitted aims, it aligns with the restrictions on certain rights and freedoms guaranteed by the ICCPR and CRC. Influenced by the ECHR, Article 24 adds the condition that any restriction must be necessary in an open and democratic society.

Article 25 of the Constitution addresses the derogation of certain rights and freedoms during times of public emergency, reflecting the provisions of Article 4 of the ICCPR. However, the lists of non-derogable rights and freedoms in Article 25 of the Constitution and Article 4 of the ICCPR are not identical. In addition to the rights enumerated in Article 4 of the ICCPR, Article 25 of the Constitution includes the right to a remedy, right to a fair and public trial, principle of legality, presumption of innocence, right to defence, and right to marry. Conversely, the list in Article 25 omits the prohibition of slavery and servitude and the prohibition of imprisonment due to the inability to fulfil contractual obligations.

■ 5.4. Second section of the second part of the Constitution: Personal rights and freedoms

The second section (Articles 26–44) encompasses a range of human rights related to criminal justice, biomedicine, dignity and inviolability of the person, liberty of movement and residence, the right to privacy, inviolability of the home, confidentiality of communication, protection of personal data, and the right to asylum. This section begins with an exploration of the constitutional provisions related to criminal justice, followed by an examination of the other provisions.

5.4.1. Cluster of human rights related to criminal justice

The first article in this section, Article 26, prohibits the death penalty, thereby giving effect to the 1989 Second Optional Protocol to the ICCPR. This prohibition is complete and unconditional. While the Constitution does not explicitly declare the right to life as done by Article 6(1) of the ICCPR, Articles 143–150 of the Criminal Code provide criminal protection for the right to life.

The cluster of human rights related to criminal justice includes Article 30 (detention), Article 31 (respect for personality in criminal and other proceedings), Article 32 (fair and public trial), Article 33 (principle of legality), Article 34 (more convenient provision), Article 35 (presumption of innocence), Article 36 (ne bis in idem), Article 37 (the right to defence), and Article 38 (compensation for illegal treatment). These constitutional provisions reflect those in Articles 9, 10, 14, and 15 of the ICCPR. However, the specific components of these ICCPR articles do not always exactly match the corresponding constitutional provisions, with some components appearing in other laws. Conversely, the Constitution guarantees some rights not explicitly covered by the ICCPR.

The content of Article 9 of the ICCPR on the right to liberty and Article 14 of the CRPD on the same right is divided among Article 28 of the Constitution, which relates to dignity and inviolability of the person, Article 29 on the deprivation of liberty, and Article 30 on pre-trial confinement. The two components of this right – liberty and security – are present in Articles 28 and 29. The principle of legality from Article 9(1) is stated in Article 29(2). Additionally, the right to be informed of the reasons for deprivation of liberty or criminal charges from Article 9(2) is reflected in Articles 29(2) and 30(2) of the Constitution. Article 29(2) requires that a person deprived of liberty is immediately informed of the reason and Article 30(2) mandates that an arrested person receives a reasoned decision on arrest within 24 hours. However, the right of an arrested or detained person to be promptly brought before a judge, guaranteed by Article 9(3), is not explicitly present in Articles 29 and 30. This right is included in Article 15(1) of the Code on Criminal Procedure but is restricted to criminal matters. Article 9(4) on the right of a person deprived of liberty to take proceedings before a court to decide on the lawfulness of their detention is reflected in Article 30(3) through the right to appeal against a decision on pre-trial confinement and it is again limited to criminal matters. Importantly, the prohibition of arbitrary arrest or detention from Article 9(1) does not appear in Articles 29 and 30. Given this incomplete transposition of Article 9 of the ICCPR into Montenegrin law, the direct effect of Article 9 of the ICCPR, as provided by Article 9 of the Constitution, might hold special significance.

Article 14(2) of the ICCPR on the presumption of innocence is mirrored in Article 35 of the Constitution and Article 3 of the Code of Criminal Procedure. Article 35(3) states that the court is obliged to interpret any doubts regarding guilt in favour of the accused, a provision not explicitly found in the ICCPR. Furthermore, Articles 33 and 34 of the Constitution establish a higher standard of criminal protection than Article 15 of the ICCPR regarding the principle of legality. Article 15 of the ICCPR requires that a criminal offense is defined by national or international law or by general principles of law. The term ‘law’ is used here in its generic sense, in the sense of law as a whole, including sub-statutory instruments such as government regulations and directives. By contrast, Articles 33 and 34 of the Constitution distinguish between criminal offenses and other punishable acts,

requiring that criminal offenses be defined by statutory law. This higher standard regarding the principle of legality is common among most State Parties that do not follow the common law system.

5.4.2. Dignity and inviolability of a person

Article 27 of the Constitution on biomedicine and Article 28 on the dignity and inviolability of a person reflect some provisions from Articles 7, 8, and 9 of the ICCPR. Article 28 expresses Article 17 of the CRPD and echoes Article 19 of the CRC. The first sentences of Article 7 of the ICCPR, Article 37(a) of the CRC, and Article 15(1) of the CRPD, which prohibit torture and cruel, inhuman, or degrading treatment or punishment, are incorporated into Article 28(3) of the Constitution. However, this incorporation is incomplete, as Article 28(3) addresses only forbidden treatment and not forbidden punishment. Some forms of torture are defined as criminal offenses in Article 167 of the Criminal Code. The second sentence of Article 7 of the ICCPR and Article 15(1) of the CRPD, which prohibit subjecting a person to medical or scientific experimentation without their free consent, is mirrored in Article 27(3) of the Constitution. The prohibition of slavery and servitude in Article 8 of the ICCPR and Article 27(2) of the CRPD is reflected in Article 28(4) of the Constitution.

5.4.3. Fair and public trial

Article 14(1) of the ICCPR on the right to a fair and public trial is implemented through Article 32 of the Constitution and various laws. This right is further developed in the Law on Courts, other court-related laws, and laws governing civil and criminal procedure. The first part of the third sentence of Article 14(1) of the ICCPR, which addresses the exclusion of the press and the public from a trial, corresponds to Article 314 of the Code of Criminal Procedure and Article 309 of the Law on Civil Proceedings. However, the reasons for excluding the public differ among the three provisions.

The second part of the third sentence of Article 14(1) of the ICCPR, which concerns the public announcement of a judgment, is mirrored in Article 375(1) of the Code of Criminal Procedure. The provision in Article 375(1) appears more consistent and logical compared to ICCPR's second part of the third sentence of Article 14(1). However, the reasons for excluding the press and the public from a trial and the reasons for non-publication of a judgment, as stated in the third sentence of Article 14(1) of the ICCPR, are not the same, which may seem peculiar.

5.4.4. Right to liberty of movement and freedom of choosing residence and the right to privacy, family, home, and correspondence

The right to liberty of movement and freedom of choosing residence, as guaranteed by Article 12(1,2) of the ICCPR and Article 18 of the CRPD is reflected in Article 39(1) of the Constitution. This right is also protected under Article 163 of

the Criminal Code. Article 12(3) of the ICCPR and Article 39(2) of the Constitution enumerate aims that justify restricting this right, although the aims specified in the two provisions are not entirely the same.

The right to privacy, family, home, and correspondence, as laid down in Article 17(1) of the ICCPR, Article 16 of the CRC and Article 22 of the CRPD is reflected in Articles 40–42 of the Constitution. However, these articles do not include the clause prohibiting unlawful attacks on someone's honour and reputation. The right to protection of the law against arbitrary or illegal interference in privacy, family, home, and correspondence, as foreseen in Article 17(2) of the ICCPR, is effectuated by Articles 169 and 170 of the Criminal Code concerning violations of the right to home, by Article 174 concerning the right to privacy, and by Articles 172 and 173 regarding the protection of communications.

While Article 17 of the ICCPR does not allow for the restriction of these rights, Articles 40–42 of the Constitution do enable restrictions. It is important to note that the right to privacy, family, and correspondence has not been recognised as an absolute right in any country.

■ 5.5. *Third section of the second part of the Constitution: Political rights and freedoms*

The third section encompasses Article 45 (right to election), Article 46 (freedom of thought, conscience, and religion), Article 47 (freedom of expression), Article 48 (conscientious objection), Article 49 (freedom of the press), Article 50 (prohibition of censorship), Article 51 (access to information), Article 52 (freedom of assembly), Article 53 (freedom of association), Article 54 (prohibition of association), Article 55 (prohibition of work and establishment), Article 56 (right to communicate with international organisations), and Article 57 (right to communicate with State organs). These articles, along with certain laws, reflect Articles 18–22 and 25 of the ICCPR, Articles 13 and 14 of the CRC, and Article 21 of the CRPD.

5.5.1. *Right to election and the freedom of thought, conscience and religion*

The right to election, as guaranteed by Article 25(b) of the ICCPR, is reflected in Article 45 of the Constitution. All components of Article 25(b) have been incorporated into Montenegrin law. The periodicity of elections and other related matters are governed by the Law on the Elections of Councillors and Members of Parliament. Articles 68, 84, and 85 of this Law give effect to Article 29 of the CRPD. The free expression of the will and the legitimacy of elections are protected by Articles 184–194 of the Criminal Code.

All components of Article 18 of the ICCPR concerning the freedom of thought, conscience, and religion are embedded in Article 46 of the Constitution, with the exception of paragraph 4, which concerns the liberty of parents to ensure the religious or moral education of their children in conformity with their own convictions. This paragraph is addressed in Articles 51, 52, and 59 of the Law on

Freedom of Religion or Belief and the Legal Status of Religious Communities. Freedom of religion is protected by Article 161 of the Criminal Code. Article 46 of the Constitution also reflects Article 14 of the CRC.

5.5.2. Freedom of expression

Article 19(1) of the ICCPR protects the freedom of opinion and Article 19(2) protects the freedom of expression. Article 19(3) defines the limits to the freedom of expression. Only paragraphs 2 and 3 are reflected in Articles 47, 49, and 51 of the Constitution. Article 47 incorporates elements from Article 19(2, 3), while Article 51 reflects Article 19(2) regarding the right to seek information. The text of Article 51 is also influenced by the case law of the ECtHR. Articles 49 and 50 of the Constitution, concerning the freedom of the press and the prohibition of censorship, express implied content of Article 19(2) of the ICCPR. The freedom of the press is further developed in the Law on Media. Articles 47 and 51 of the Constitution give effect to Article 13 of the CRC and Article 21 of the CRPD. The freedom of expression is protected by Articles 178 and 179 of the Criminal Code. The specific restrictions on the freedom of expression regarding national, racial, or religious hatred, as laid down in Article 20(1) of the ICCPR, are secured in Article 443(3) of the Criminal Code.

5.5.3. Freedom of assembly and freedom of association

The right to peaceful assembly, as recognised by Article 21 of the ICCPR and Article 15 of the CRC, corresponds with Article 52 of the Constitution. However, Article 52 requires prior notification of the competent authority. This right is further developed in the Law on Public Gathering and Public Events. Notably, Article 3 of this Law does not require prior notification for peaceful assembly as mandated by Article 52 of the Constitution. The right to peaceful assembly is protected by Article 181 of the Criminal Code.

The right to the freedom of association, guaranteed by Article 22 of the ICCPR, is reflected in Article 53 of the Constitution. Article 53 requires the registration of an association with the competent authority. Restrictions on this right, as outlined in Article 22(2) of the ICCPR, are expressed in Article 54 of the Constitution, which prohibits political organisation within state bodies. The right to the freedom of association has been further developed, among other things, in the Law on Non-Governmental Organisations.

■ 5.6. Fourth and fifth sections of the second part of the Constitution: Economic, social, and cultural rights and particular protection of minorities

The fourth section covers Article 58 (property), Article 59 (entrepreneurship), Article 60 (right to inheritance), Article 61 (rights of aliens), Article 62 (right to work), Article 63 (prohibition of forced labour), Article 64 (employee rights), Article 65 (Social Council), Article 66 (strike), Article 67 (social insurance), Article

68 (protection of persons with disabilities), Article 69 (health protection), Article 70 (consumer protection), Article 71 (marriage), Article 72 (family), Article 73 (mother and child protection), Article 74 (rights of the child), Article 75 (education), Article 76 (freedom of creation), Article 77 (science, culture, and arts), and Article 78 (protection of environmental and cultural inheritance). The content of the fourth section is influenced not only by the ICESCR, the CRC, the CRPD, and other UN treaties, but also by European conventions and EU law. As previously stated, many provisions of the ICESCR define only the legal frameworks of some rights and not the rights precisely enough to be invoked before national courts. As they are not capable of producing direct effect in national legal systems, their incorporation in national law is of particular importance. Many constitutional provisions on economic, social, and cultural rights are brief and general. Therefore, their elaborations in law are of particular significance.

The fifth section on the protection of minorities includes two articles: Article 79 (protection of identity) and Article 80 (prohibition of assimilation). They reflect Article 27 of the ICCPR and incorporate elements from the European instruments on the protection of minorities.

5.6.1. Right to work and the right to just and favourable conditions of work

Article 62 (right to work) and Article 64 (employee rights) of the Constitution correspond partly with Article 6(1) (right to work) and Article 7 (right to just and favourable conditions of work) of the ICESCR and Article 27 of the CRPD. Besides proclaiming the right to work, Article 62 of the Constitution protects the freedom to choose employment, as guaranteed in Article 6 of the ICESCR, and ensures just and humane conditions of work, thus reflecting the substance of Article 7 of the ICESCR and Article 27 of the CRPD. Article 64 of the Constitution includes some components of Article 7 of the ICESCR. Article 6(2) of the ICESCR, regarding training programs for employees, is reflected in Article 93 of the Labour Law. Article 17 of the Law further develops Article 64 of the Constitution. Article 7(a) (i) of the ICESCR, concerning equal remuneration, is incorporated into Article 99 of the Labour Law. Article 6(2) of the ICESCR, aside from the training program, has a programmatic character and should serve as guidance for the economic policy; however, it is not suitable to be directly reflected by the law. Article 27 of the CRPD, related to work and employment, is included in Article 119 of the Labour Law. Article 6(2) of the ICESCR regarding the full realisation of the right to work is echoed in the Law on Employment and Exercising Rights with Respect to Unemployment Insurance.

5.6.2. The right to social security, the right to health and protection of family

Article 67 of the Constitution states that social insurance for employees is obligatory and that the State ensures material security for individuals who are incapable of working and have no means of livelihood. The right to social security is further

elaborated in the Law on Social and Children Protection. Article 67 of the Constitution and the Law reflect Article 9 of the ICESCR, Article 27 of the CRC, and Article 28 of the CRPD. Articles 14 and 15 of the Law on Pension and Disability Insurance gives some effect to Article 28(2) of the CRPD regarding retirement benefits.

Article 69 of the Constitution guarantees everyone the right to health protection, but only children, pregnant women, the elderly, and persons with disabilities have the right to health protection from public funds. This article is further developed through the Law on Health Protection. Article 69 of the Constitution and the Law partly mirror the right to health as outlined in Article 12 of the ICESCR, Article 24 of the CRC, and Article 25 of the CRPD.

Article 72 of the Constitution provides the family with particular protection, establishes the basic obligations of parents and children regarding mutual care, and equalises the rights of children born in and out of wedlock. It partly reflects Article 10 of the ICESCR.

■ 5.7. *Concluding remarks*

The great majority of the provisions of UN human rights treaties are reflected in the Constitution and/or the laws of Montenegro. This means that the texts of the national provisions correspond with the key components of the provisions of UN treaties, ensuring their effects in the Montenegrin legal system. If some components of international provisions are not mirrored by national provisions and cannot thus take effect in the national legal system, Article 9 of the Constitution, as interpreted by the Constitutional Court, secures the direct effect of the non-transferred components of international provisions in the national legal system. In other words, Article 9 excludes the possibility of a lacuna in the effects of UN treaties in the national legal system regarding international provisions capable of producing direct effects.

6. Some major law-making processes in Montenegro influenced by UN human rights treaties

The primary legal reforms initiated following Montenegro's reestablishment of independence were directed towards aligning its legal system with the EU *acquis* as part of the EU accession process. These reforms focused on, among other objectives, strengthening the independence of the judiciary, combating corruption and organised crime, and enhancing the protection of human rights. The first two areas of reform were implemented in cooperation with the Venice Commission and the Council of Europe's Group of States against Corruption (GRECO), ensuring compliance with European regional standards. Additionally, UN human rights treaties and their associated monitoring bodies played a significant role in advancing human rights protections in Montenegro. The recommendations of these

bodies were incorporated into Montenegrin legislation through the adoption of new laws or amendments to existing legislation. These legislative developments were integral to the broader legal reform efforts during the accession process and were subject to evaluations not only by human rights monitoring bodies but also by EU institutions.

This section examines the significant impact of all UN treaties on Montenegrin legislation as detailed in Section 4. Notably, the influence of these treaties on Montenegro's legislative framework dates back to its time as part of the Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro, periods during which Montenegro maintained its own legal order. These earlier impacts are relevant, as many of these laws remained in force following Montenegro's independence. Furthermore, the influence of certain UN treaties on domestic legislation often overlaps, meaning that a single treaty may have affected multiple domestic laws. The subsequent analysis will connect each piece of domestic legislation with the specific UN treaty that played a predominant role in its enactment or modification.

■ **6.1. *Impact of the 1951 Convention Relating to the Status of Refugees***

The 1951 Convention Relating to the Status of Refugees had a significant impact on Montenegro's legislative framework, notably influencing the adoption of the Law on Asylum on 10 July 2006. Article 2(2) of the Law stipulates that asylum shall be granted to foreign nationals in need of international protection, in accordance with the 1951 Convention, the 1967 Protocol Relating to the Status of Refugees, and the ECHR. This law fully integrates the principles of the 1951 Convention into Montenegro's legal system. The Law was amended in 2011 to address the reunification of refugee families. Additionally, on 23 November 2006, the Government enacted the Decree on Amendments to the Decree on the Organisation and Method of Work of the Government, thereby establishing the Bureau for the Care of Refugees.

■ **6.2. *Impact of the 1966 International Covenant on Civil and Political Rights***

The ICCPR had a profound impact on multiple legislative processes in Montenegro. The laws influenced by the ICCPR include, but are not limited to, the Law on Public Gatherings and Public Events, Law on Minority Rights and Freedoms, Law on Media, Law on the Freedom of Religion or Belief and the Legal Status of Religious Communities, Law on Free Access to Information, Law on Free Legal Aid, Law on the Courts, and Law on the Protector of Human Rights. The Human Rights Committee has positively evaluated the adoption of several of these laws, as well as their subsequent amendments.

■ 6.3. *Impact of the 1966 International Covenant on Economic, Social and Cultural Rights*

The ICESCR significantly influenced various legislative processes in Montenegro. Key laws adopted under its influence include the Law on Pension and Disability Insurance, Law on Employment and the Exercise of Unemployment Insurance Rights, General Law on Education and Tuition, the Law on Vocational Education, Law on Higher Education, Labour Law, and Law on Health Protection.

■ 6.4. *Impact of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination*

The CERD primarily impacted the Law on the Prohibition of Discrimination, with additional influence on the amendments to the Criminal Code.

■ 6.5. *Impact of the 1979 Convention on the Elimination of All Forms of Discrimination against Women*

The adoption of the Law on Gender Equality in Montenegro was driven by the provisions of CEDAW. Additionally, the Convention influenced the amendments to the Criminal Code.

■ 6.6. *Impact of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

The CAT played a key role in shaping amendments to Montenegro's Criminal Code. In 2023, Article 129 of the Criminal Code was amended to abolish the statute of limitations for the offense of torture and Article 167 was revised to incorporate the definition of torture as outlined in Article 1 of the CAT. Furthermore, the 2021 amendments introduced stricter penalties for domestic violence, ongoing family violence, and offenses threatening the safety of journalists. In 2017, the Criminal Code was also amended to criminalise various forms of violence against women, including female genital mutilation, and forced sterilisation.

■ 6.7. *Impact of the 1989 Convention on the Rights of the Child*

The CRC had significant influence on Montenegro's Family Law and the Law on Social and Children Protection.

■ 6.8. *Impact of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Although Montenegro succeeded the State Union of Serbia and Montenegro in signing the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it has not yet ratified the Convention. As a result, this Convention has not had a notable impact on Montenegro's legislative processes.

■ 6.9. *Impact of the 2006 Convention on the Rights of Persons with Disabilities*

The CRPD had a remarkable impact on Montenegro's legal system. In 2008, Montenegro adopted the Law on Professional Rehabilitation and Employment of Persons with Disabilities, even before the CRPD was ratified in 2009. In 2011, Montenegro passed the Law on the Prohibition of Discrimination of Persons with Disabilities. The 2017 Law on Spatial Planning and Construction of Buildings also shows the influence of the CRPD by addressing the right of access to public buildings through construction regulations. CRPD's impact extends to numerous other laws, including the Law on the Election of Councillors and Deputies, Law on Free Access to Information, Law on Social and Child Protection, Law on Foreigners, Law on Health Protection, Family Law, and the Criminal Code. All these laws were either adopted or amended after Montenegro ratified the CRPD.

7. Relevant case law in respect to Montenegro: Case of *Hajrizi Dzemajl et al. v. Yugoslavia*

The *Hajrizi Dzemajl* case was the only one related to Montenegro brought before the monitoring bodies. The case concerns the complete destruction of a Roma settlement located near the town of Danilovgrad, Montenegro, at a site known as Božova Glavica, in 1995.⁵³ Montenegro was then a federal unit of the FR Yugoslavia and only Montenegrin authorities were involved in the incident. Represented by the European Roma Rights Center, an NGO based in Hungary, the Humanitarian Law Center, an NGO based in Yugoslavia, and attorney Dragan Prelevic, Hajrizi Dzemajl and 64 Romani ethnicity' citizens brought their case before the Committee against Torture.

The Committee found that there was a violation of the CAT. Gloria Jean Garland, legal director of the European Roma Rights Center, described the Committee's decision as a landmark ruling, marking it as the single most important decision ever adopted by the Committee, particularly for Roma rights.⁵⁴ After the presentation of the facts of the case, the decisions of the Committee on admissibility and on the merits are considered.

■ 7.1. *The facts of the case*

Following reports that two ethnic Romani minors allegedly raped a minor ethnic Montenegrin girl, rumours spread quickly among the citizens of Danilovgrad. Later that night, around two hundred ethnic Montenegrins gathered in front of

53 Hajrizi Dzemajl et al. v. Yugoslavia (Complaint No. 161/2000) Decision of the Committee against Torture, 21 November 2002 (CAT/C/29/D/161/2000).

54 UN Committee against Torture Finds Montenegrin Authorities in Flagrant Breach of Human Rights Standards – European Roma Rights Centre [Online]. Available at: <https://www.errc.org/> (Accessed: 28 June 2024).

the police station, demanding that the Municipal Assembly expel all Roma from Danilovgrad.⁵⁵ The crowd threatened to ‘exterminate’ and ‘burn down’ the Roma and their homes.

The police responded by arresting all young men in the Roma settlement, and two of them confessed under duress that they had perpetrated the crime. The rest were released but warned by the police to leave Danilovgrad immediately due to the risk of lynching by non-Roma citizens.⁵⁶ A police officer also visited the Božova Glavica Roma settlement, ordering residents to evacuate immediately and causing panic. Most residents fled towards Podgorica, while a few remained to protect their homes and livestock.

Early the next morning, the same police officer returned with another officer, advising the remaining Roma to leave Danilovgrad, stating that no one could protect them.⁵⁷ Hours later, a group of non-Roma residents arrived at the settlement, throwing stones and breaking windows. The remaining Roma sought refuge in a cellar and eventually fled to Podgorica.⁵⁸ Later that morning, a police car patrolled the empty settlement.

In the afternoon, a second wave of several hundred non-Roma residents entered the settlement, chanting threats to evict and burn down the settlement.⁵⁹ Over four hours, the crowd completely destroyed and burned down the settlement.⁶⁰ The police present did not intervene to stop the violence or protect Romani property, only ensuring that the fire did not spread to nearby non-Roma buildings.⁶¹

Several days after the pogrom, heavy machinery from the Public Utility Company cleared the debris completely, but the Romani residents never returned.⁶² Although some participants were identified, no one was convicted due to alleged ‘lack of evidence’. Authorities failed to inform the victims of this decision, denying them the opportunity to pursue private prosecution. At the time of the Committee against Torture’s decision, criminal and civil proceedings for compensation were ongoing.

The complainants argued that the State Party violated Article 2(1) of the CAT, in conjunction with Articles 1, 16(1), and 12, 13, 14 taken alone or together with Article 16(1) of the CAT.⁶³

55 *Hajrizi Dzemažl et al. v. Yugoslavia*, paragraph 2.2.

56 *Ibid.*, paragraph 2.3.

57 *Ibid.*, paragraph 2.4.

58 *Ibid.*, paragraph 2.5.

59 *Ibid.*, paragraphs 2.6 and 2.7.

60 *Ibid.*, paragraph 2.7.

61 *Ibid.*, paragraphs 2.8 and 2.9.

62 *Ibid.*, paragraph 2.13.

63 *Ibid.*, paragraph 3.1.

■ 7.2. *Decision on the admissibility of the complaint*

The State Party contested the admissibility of the complaint, arguing that the case had been handled in accordance with national legislation and that available legal remedies had not been exhausted. The complainants countered that, given the severity of the harm suffered, criminal prosecution was the only appropriate remedy, asserting that civil or administrative remedies were insufficient. They claimed they were deprived of criminal remedy due to authorities' actions. Additionally, they urged the Committee to consider the complaint in light of the broader context of systematic police brutality and dire human rights conditions faced by Roma in Yugoslavia.

In the absence of compelling rebuttal from the State Party, the Committee ruled the complaint admissible on 23 November 2000.⁶⁴

■ 7.3. *Decision on the merits*

The Committee determined that the burning and destruction of the houses under the circumstances of the case constituted acts of cruel, inhuman, or degrading treatment or punishment.⁶⁵ The aggravating factors included the presence of some complainants still hiding in the settlement during the pogrom, the particular vulnerability of the victims, and the significant racial motivation.⁶⁶ The Committee found that the failure of the police to make any efforts to protect the Romani residents and their property amounted to 'acquiescence', as defined in Article 16 of the CAT. Article 16(1) obligates State Parties to prevent acts of cruel, inhuman, or degrading treatment or punishment when committed with the acquiescence of public officials. Given that the Committee characterised the acts of burning and destruction as falling within this category, and considering the passivity of the police officers, the Committee concluded that Yugoslavia violated Article 16(1) of the CAT.⁶⁷

Articles 10–13 of the CAT establish the various obligations of State Parties concerning torture, with Article 16(1) extending these obligations to acts of cruel, inhuman, or degrading treatment or punishment. The Committee found that Articles 12 and 13 were applicable to the facts of the case. Article 12, in conjunction with Article 16(1), mandates that a State Party must promptly and impartially investigate any acts prohibited by the CAT. Previous interpretations of Article 12 by the Committee have included identifying potential perpetrators and determining the nature and circumstances of the acts. As no individuals, including police officers, were tried in Montenegrin courts, the Committee concluded that Yugoslavia violated Article 12 of the CAT.⁶⁸ Article 13, in conjunction with Article

⁶⁴ Ibid., paragraph 6.

⁶⁵ Ibid., paragraph 9.2.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid., paragraph 9.4.

16(1), obliges a State Party to ensure that any individual alleging victimisation under the acts prohibited by the CAT has the right to complain to the competent authorities. The Montenegrin authorities' failure to inform the complainants of the decision to discontinue the investigation, thereby preventing them from pursuing private prosecution, led the Committee to determine that Yugoslavia violated Article 13.⁶⁹

Regarding Article 14 of the CAT, the Committee interpreted it in light of other provisions and the object and purpose of the Convention, extending the interpretation beyond its textual limits. Article 14 specifies that a State Party must ensure in its legal system that victims of torture obtain redress and fair compensation. However, Article 16(1) does not explicitly extend Article 14 to cover the victims of acts of cruel, inhuman, and degrading treatment or punishment. Nonetheless, the Committee emphasised:

Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.⁷⁰

Consequently, the Committee found that Yugoslavia violated Articles 16(1), 12, and 13 of the CAT. The Committee thus urged Yugoslavia to conduct effective criminal investigations, prosecute and punish those responsible, and provide fair compensation to the complainants.⁷¹

8. Overall conclusions

Montenegro's modern human rights journey, since its reestablished independence in 2006, commenced with a relatively short historical foundation in human rights institutions. The nation's commitment, as articulated in the preamble of its Constitution, to build a state based on the values of freedom, peace, tolerance, respect for human rights and freedoms, multiculturalism, democracy, and the rule of law set the stage for consolidating and advancing human rights – a crucial aspect of its path towards EU accession. The positive EU Commission's Interim Benchmarks (IBAR) report on rule of law and human rights of 26 June 2024 stands as substantial evidence of Montenegro's progress during this period.

⁶⁹ Ibid., paragraph 9.5.

⁷⁰ Ibid., paragraph 9.6.

⁷¹ Ibid., paragraphs 10 and 11.

UN human rights treaties, the UN Human Rights Council, and monitoring bodies have played pivotal roles in this advancement. Montenegro is a State Party to nearly all UN human rights treaties and is engaged hearty cooperation with the Human Rights Council and monitoring bodies. As a two-term member of the Council, Montenegro significantly contributed to its activities and benefited greatly from recommendations and reviews. The regular submission of reports, as well as the acceptance and implementation of recommendations underscore Montenegro's commitment to integrating international human rights standards into its legislative and institutional framework.

Montenegro fulfils its obligations under UN human rights treaties in two main ways: first, by reflecting convention rights and obligations in its Constitution and laws and, second, by ensuring the direct effects and supremacy of these treaties through Article 9 of its Constitution. Although the national courts do not frequently invoke UN treaties directly, preferring instead to reference ECHR and ECtHR case law due to differences in judicial control and conciliatory proceedings of monitoring bodies, the influence of UN treaties is substantial through the alignment of national laws as recommended by monitoring bodies.

While most of the alignment occurred during Montenegro's time as part of the FR Yugoslavia, the impact of the new UN treaties to which Montenegro acceded after regaining independence, particularly the CRPD, significantly influenced its legislative landscape. Montenegro's continuing membership of the State Union of Serbia and Montenegro in the ECHR, coupled with its small population, have contributed to a lack of cases against Montenegro before monitoring bodies. However, a historical case brought before the Committee against Torture during its federation membership underscored a significant moment in Montenegro's human rights journey.

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