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The History of the Codification of Civil Law in Montenegro

ABSTRACT: *The study analyzes five periods in the history of the codification of civil law in Montenegro, from the 19th century to the present. Until the second half of the 19th century, custom was the main 'regulator' of legal life. The rules created by long-standing customary practice in Montenegro were perceived in the people's awareness as legally binding. For centuries, the people of Montenegro were suspicious of novelties that seemed opposed to their ingrained forms and convictions.*

The first laws that regulated certain (limited) property-related legal relations were the Code of Petar I Petrović Njegoš of 1798 (1803) and Danilo's Code of 1855. The first civil code that codified the existing customary law in Montenegro and incorporated the achievements of contemporary jurisprudence belonging to the common law of modern nations was the General Property Code for the Principality of Montenegro of 1888, written by the renowned jurist Valtazar Bogišić. By its overall qualities, this Code represents the most accomplished legislative act among the countries of the former Yugoslavia. It remained in effect until 1946, when socialist legal relations and dominant social property were established in the former Yugoslavia.

From 1946 to the present, civil legal relations in Montenegro have been regulated by a number of laws. A deeper, substantial intervention in Montenegro's civil law will be achieved with the adoption of an integrated civil code, the drafting of which is near completion. The Code will consist of seven parts: the general part, the law of persons, family law, property law, obligation law, inheritance law, and the 45 famous legal maxims taken from the concluding part of the General Property Code for the Principality of Montenegro.

The unified civil code of Montenegro will maintain continuity with previous legislation, incorporate modern principles of civil law, and take into consideration the relevant positions of court practice in Montenegro and the European Union.

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1. Beginnings of the codification of civil law in the 19th century

Codification of civil law has overall legal and social significance. Because of its complexity, vast scope, and reach, this work can only be undertaken by individuals of outstanding legal culture and professional expertise. Codification in this field is the most complex and extensive, and at the same time the most noble and difficult – especially the codification of such an intricate subject as civil law. When Napoleon gladly accepted that the newly promulgated civil code be named after him, he was aware that the civil code is, in every sense, the most authoritative among all other codes, which, although a book in form, actually represents a monument. For this reason, the French Civil Code is a monumental code, named after Napoleon, with an honor that no other code in France had 'merited'.

For a long time in the history of Montenegro, unwritten rules of conduct, originating from long-standing customary practice, were in force. Montenegrin customs implied social sanctions (ridicule, contempt by the community, boycott, etc.). These social behaviours were in many ways stable and resistant to change. Many of these basic, simple customs came to be recognised as legal customs, perceived as binding, i.e., with the awareness that courts would refer to them.

In Montenegro, customary law remained for a long time the main regulator of legal life. Although a large part of these rules was not recorded in writing, customary law held almost exclusive 'dominance' in Montenegro's legal life. In practice, some of these rules derogated from the provisions of the then-valid Danilo's Code, even though they were not mentioned in it. Montenegrin judges – though not jurists by training – were often skilful in avoiding the application of legal rules when they believed these conflicted with positive custom, i.e., with justice. The state authority had no objections to such judicial reasoning, nor did it consider this practice to undermine the authority of the state and its organs. Judges, who came 'from the people', applied rules of customary law contra legem, even though they were familiar with legal rules.

Until the Berlin Congress, at which Montenegro gained international recognition, laws as general acts were rarely passed. Although legislation was an active source of law, it was not the dominant legal form at the time. Many social relations were primarily regulated by legal acts inferior in force to law. Alongside customs, a significant part of these relations was regulated by such acts as: decisions of the Assembly of Heads of Montenegro and the Highlands; Rulebooks; Conclusions of the Assembly of Elders; decisions of the council of nahias; decisions of the

judiciary; orders and edicts of the Prince; orders and decrees of the Senate; orders of dukes; company codes of conduct; proclamations of the Senate; and decisions of councils of nahia heads, among others.

Between the end of 1796 and the Berlin Congress (82 years), Montenegro enacted the following five laws: Stega (June 20 / July 1, 1796); The General Code of Montenegro and the Highlands (1797–1803); Danilo's Code (April 23 / May 5, 1885); Telegraph and Telegram Law (January 2/14, 1870); and the School Code (September 25 / October 7, 1870). During Njegoš's reign, the Laws of Paternity (May 23 / June 4, 1833) were drafted – a legal project that never came into force due to a conflict between Njegoš and its author, Ivan Ivanović Vukotić, president of the Judiciary Senate of Montenegro and the Highlands.

At the time of the Berlin Congress, three legal acts were in force in Montenegro, formally named as 'laws' or 'codes': Danilo's Code (95 articles); Law on Telegraph and Telegram (42 paragraphs); and the School Code (3 paragraphs, accompanied by the Instructions for the Chief School Supervisor and the Teachers' Law – 24 paragraphs).[1]

In the first half of the 19th century, the rules of customary law were still dominant and treated as the legacy of the ancestors. Their application was considered mandatory, almost of a religious character.[2] In the poor Montenegrin society, law, religion, moral code, custom, and folklore were closely connected and intertwined. The people also turned to religion in search of answers to vital existential questions. However, the tribal organization of the state and its customs persisted in congruence with religious concepts. Tribal institutions and customs, the cult of ancestors, and tribal solidarity were the main regulators of social relations.[3]

For a long time, the people of Montenegro was suspicious of novelties, which they regarded as opposed to their native customs and beliefs. Montenegrin tribes in the border areas adopted many customs from neighbouring Turkey, Albania, and Herzegovina.[4]

From the election of Bishop Danilo Petrović Njegoš in 1697 until the establishment of secular power and the creation of the Principality of Montenegro in 1852, Montenegro was governed by Orthodox bishops of the Petrović Njegoš dynasty. They held both spiritual and secular authority. The Cetinje Metropolitanate was at the head of the church in Montenegro, and the metropolitans of Cetinje exercised both religious and political leadership.

At a time when Montenegro had the status of a 'pre-state', the Orthodox Church was one of the most powerful organisations. It shaped political and religious life as well as education. Economically, it was also a dominant force. The main religious sanctions were the threat of a curse and the punishment in the

1 Crnogorski zakonici, 1998a, pp. 167, 228 and 237.
2 Stojanović, 2009a, p. 84.
3 Ibid., p. 84.
4 Bogišić, 2004, p. 237.

'afterlife'.[5] The General Code of Montenegro and the Highlands of 1798, amended in 1803 (the Code of Petar I Petrović Njegoš), was passed 'In the name of our Lord Savior Jesus Christ'. The struggle for national liberation was carried out under the slogan: 'For the honourable cross and the golden freedom'.

The Church owned extensive properties across almost all nahias. It held the largest fisheries, large tracts of land, vineyards, and large herds of livestock. It also collected significant revenues from leasing land in border regions (then under Turkish rule) and from leasing real estate in the coastal areas, which at the time were not part of Montenegro. Many testamentary dispositions referred to the Church. In addition to supporting the maintenance of churches and monasteries, these revenues were the main source of funding for the liberation struggle, as well as for schooling and education.

The first law in Montenegro regulating certain property-legal relations was the General Code of Montenegro and the Highlands, also known in the professional community as the Code of Petar I Petrović Njegoš. The Code was passed in 1798 at the Assembly of Heads and Elders from the Montenegrin tribes and the 'Free Region of Montenegro and the Highlands' at the Monastery Stanjevići near Budva. It initially contained 16 articles and was supplemented in 1803 with an additional 17. The Code relied heavily on customary law, with provisions predominantly in the field of criminal law.

The limited provisions on property rights in this Code addressed the exercise of the right of pre-emption over assets (houses, land, forests).[6] The order of exercising this right was as follows: closest relatives; neighbours (pomeđaši); and finally, members of the village or tribe. Another provision concerned the protection of property rights, which was the only form of protection for restoring assets, collecting receivables, and obtaining compensation for damages.[7] Article 30 of the Code stipulated rules for material damage compensation, while Article 31 provided for judicial protection to secure such compensation.

The General Land Code, better known as Danilo's Code, was adopted on April 23/May 5, 1855. This Code was one of the fundamental legal regulations passed by the state government in the mid-19th century. It contains 95 articles. Although most provisions dealt with criminal law, it included a larger number of property law provisions compared to the Code of Petar I Petrović Njegoš, particularly in the areas of family law and inheritance law.

The civil law provisions of Danilo's Code regulated: the exercise of the right of pre-emption;[8] property division among relatives inter vivos and mortis causa;[9] and certain family law matters (marriage, sanctions in cases of a wife's infidelity,

5 Stojanović, 2009a, p. 84.
6 Art. 15 of Zakonika Opšteg crnogorskog i brdskog.
7 Art. 16 of Zakonika Opšteg crnogorskog i brdskog.
8 Arts. 45 and 46 of Opšteg zemaljskog zakonika.
9 Arts. 47–57 of Opšteg zemaljskog zakonika.

divorce, and spousal support).[10] Holders of the right of pre-emption over real estate were the same as in the Code of Petar I Petrović Njegoš.

From 1831 to 1879, the central state body with judicial and administrative functions was the Senate of Montenegro and the Highlands. In 1879, the Grand Court was established. Its judges played a major role in the creation of civil law rules.

In the first half of the 19th century, Montenegro had no trained lawyers. The first law graduate was Gavro Vuković, who graduated from the Law Faculty in Belgrade in 1873. Until the second half of the 19th century, judges in Montenegro were not trained in law but were selected from among the most prominent people, distinguished by their strong sense of justice.

From 1879 to 1918, the presidents of the Grand Court in Cetinje were: Božo Petrović Njegoš, Duke Đuro Matanović, Duke Đuro Cerović, Dr. Ignacij Bakotić, Dr. Lazar Tomanović, Dr. Labud Gojnić, and Dr. Milo Dožić.

2. Codification of civil law in the second half of the 19th century

After its international recognition at the Berlin Congress (July 13, 1878), a real legislative 'boom' occurred in the Principality of Montenegro, which, generally speaking, has remained inexplicably insufficiently studied in legal theory.[11] If one considers that over 100 acts, formally called 'law' or 'code', were passed within 32 years (1878–1910), and that only three laws were in effect in Montenegro at the time of the Berlin Congress, the astonishment is even greater. In Montenegrin legal history, there was possibly no comparable quantitative and qualitative 'legislative leap', given the situation that preceded it. Beginning with this 'legislative leap', Montenegro adopted dozens of laws which, at the time, represented genuine European legislative achievements. The most important among them were: the *General Property Code for the Principality of Montenegro;* the *Criminal Code for the Principality of Montenegro*; the *Expropriation Law*; the *Commercial Code*; the *Law on Election of People's Deputies*; the *School Code*; the *Law on High Schools*; the *Law on Illegitimate Children*; the *Law on the State Library and Museum*; the *Law on the Princely Government and State Council*; the *Law on the Organization of Courts*; the *Law on Civil and Judicial Jurisdiction;* the *Law on Criminal Jurisdiction;* the *Customs Law*; the *Code of Judicial Procedure in Civil Litigation*; the *Law on the Press*; and others. In that period (1905), the first Montenegrin Constitution was also adopted. The most comprehensive legislative reforms were carried out in 1888, 1898, 1902, 1905, and 1906.

10 Arts. 68–77 of Opšteg zemaljskog zakonika.

11 Stojanović, 2009a, p. 46; Stojanović, 2009c, pp. 513–516; Stojanović, 2009b, pp. 457–646; Šuković, 2006, pp. 129–385.

Of all these laws, the *General Property Code for the Principality of Montenegro* (hereinafter: OIZ) should be singled out. The OIZ was adopted in 1888 (with amendments in 1898). Its author was Valtazar Bogišić, 'a knowledgeable man of encyclopaedic erudition, polyglot, professor of Slavic law at the University of Odessa, Minister of Justice of the Principality of Montenegro, and member of many scientific societies and academies'.[12] This Code primarily contains provisions on property law and the law of obligations, which is why it is called the property code. Family and inheritance law provisions are only scarcely present.

By general opinion, this Code represents the most accomplished legislative work within the territory of the former Yugoslavia. It has been translated into six foreign languages, and many scholarly papers have been written about it in Montenegrin and foreign languages. This Code is an honour to Montenegro and to its creator. One might even say that in its history, no outsider or foreigner has bestowed upon Montenegro a spiritual creation of such value as did Valtazar Bogišić, this nobleman from Cavtat, university professor, and Montenegrin Lycurgus. The Code reflects the greatness of his legal enthusiasm and intellectual depth.

The drafting of the OIZ[13] was carried out in two phases. The first phase, from April 1873 to June 1881, included: a) preparing a questionnaire of approximately 2,000 questions; b) conducting an extensive survey in Montenegro, Herzegovina, and northern Albania; c) reviewing previous Montenegrin laws and their application; d) collecting remnants of the old law of Grbaljska Župa and judicial documents in Paštrovići; e) studying scientific and specialist literature; f) drafting a framework of the OlZ.[14]

The second phase, from July 1, 1881 to the end of 1887, included: a) discussing each article of the draft at approximately 100 sessions of the Montenegrin Committee for the Inspection and Examination of the OIZ; b) composing the final text of the OIZ; c) the decree on promulgation by the Prince.[15]

Bogišić drew material for the Code from oral sources (by questioning prominent individuals), written sources (studying acts, protocols, and laws), and his own observations. He collected approximately 2,000 questions on the life of Montenegrins and neighbouring peoples. He reviewed archival material of the Senate, district offices, and captains' courts. He studied the Code of Petar and the Code of Danilo, attended trials, and drew on the rich heritage and principles of Roman law, as well as on contemporary Western European legislation.[16]

12 Leksikon, 1995, p. 452.
13 Bojović, 1992, pp. 47–75.
14 Glas naroda, 3 (1873) 3, p. 24; Glas Crnogorca, 1 (1873) 10; Zakonska radnja g. Bogišića. Glas Crnogorca, 2 (4 X 1874) 1, pp. 1–2.
15 Stojanović, 1991, pp. 11–115; Bojović, 1992, pp. 47–75; Vojinović, 1888; Vojinović, 1889, pp. 1–109; Đorđević, 1888, no. 15–22; Martinović, 1958, pp. 220–228.
16 Pupovci, 2004, p. 254.

While drafting the OIZ, Bogišić undoubtedly relied on customary law and the legal consciousness of the Montenegrin people but also on the civil code drafts of the time. In this respect, we may particularly emphasise: the draft of the Swiss Civil Code, the cantonal codes (the Code de Grisons and the Zurich Code), the Civil Code of California, and others. The OIZ was also strongly influenced by the Ottoman *Mecelle*, specifically in terms of its system, terminology, content, and the solutions it offered for certain legal institutions. Many provisions on property and obligations law were modelled on newly adopted civil codifications.[17]

During the drafting of the OIZ, Bogišić established closer ties with two codification commissions in Europe: the German[18] and the Swiss[19]. It is well known that in the second half of the 19th century, four states were engaged in similar efforts: Hungary, Germany, Russia, and Japan.[20] To these, the Swiss commission for the codification of the law of obligations should be added, given its scope; it began its work independently in 1868.

Bogišić was also familiar, though to a lesser extent, with the work of the Hungarian commission, which began in the early 1870s. In Russia, two commissions were established in 1883, but only the first volume was published in 1899. In Japan, the work was entrusted in 1873 to the Parisian professor Boissonade.

During the drafting of the OIZ, Bogišić frequently consulted with members of the first German commission on various issues. In this context, it is important to note the influence of the German draft civil code on the rules of private international law in the OIZ for the Principality of Montenegro. Many of these solutions remain relevant to this day.[21]

While working on the text of the OIZ, Bogišić also obtained the most recent codes of Argentina, Mexico, Guatemala, Uruguay, and California. Among these codes, the greatest influence came from the California Civil Code of 1872. In this regard, particular emphasis should be placed on the 35 Articles at the end of this Code, which contain the maxims of jurisprudence – general rules of civil law created under the influence of the final title of the Pandects, *De (diversis) regulis iuris*. These provisions of the California Civil Code partly influenced the legal maxims found at the end of the OIZ.[22]

Bogišić also particularly emphasised the 35 introductory provisions of the Serbian Civil Code of 1844. What these rules and the OIZ have in common is that their primary source lies in the *regulae iuris*. However, only a small number of general rules from these two codes are similar.[23]

17 Pupovci, 2004, p. 283; Rašović, 2016, p. 112.
18 Wagner, 2007; Vormbaum, 1976; Behn, 1980; Schubert, 1978; Schmoeckel, 2005.
19 Zimmermann, 1962; Zimemann, 1989, pp. 147–152.
20 Pismo Valtazara Bogišića Kosti Vojinoviću iz Petrovgrada od 3.juna 1888.godine, Bogišićev arhiv u Cavtatu, BBC , XI a; Rašović, 2016, p. 115.
21 Rašović, 2021, pp. 55–49.
22 Pupovci, 2004, p. 283; Rašović, 2016, pp. 441–474.
23 Mirković, 2014, pp. 75–103; Rašović, 2016, pp. 429–441.

It is well known that the OIZ influenced the structure of the Japanese Civil Code of 1890. Valtazar Bogišić and Macajomi-Macurata, then Vice Minister of Finance in the Japanese government, could hardly have imagined that their meeting on 5 July 1878 would spark such professional interest, lasting to this day. On that occasion, discussions were held regarding the Montenegrin experience in drafting its property code. Bogišić was also in frequent communication with Gustave Émile Boissonade, the principal foreign legal adviser and main drafter of the Japanese Civil Code and an associate professor at the Paris Faculty of Law. Similarly, during numerous meetings with Prince Nikola to report on the progress of the Montenegrin Code, Bogišić never failed to brief the ruler on the development of the Japanese Civil Code and to emphasise the influence of the OIZ's system on the Japanese codification.[24]

Certain provisions of the OIZ were also influenced by the *Mecelle* (the Ottoman Civil Code), whose first book was adopted in 1869 and the last, the sixteenth book, in 1876. Bogišić made particular use of the solutions contained in the introductory part of the *Mecelle*, most likely because both this part and the concluding part of the OIZ were largely inspired by the *regulae iuris*. Furthermore, similarities between the two codes are evident in terms of: (1) system (more comprehensive regulation of property and obligations law); (2) terminology (certain Turkish legal terms were incorporated into the OIZ); (3) certain legal institutions (e.g., *natapanje zemlje*; *podlog* – a type of pledge; *kesim*; *napolica*; *amanet*).[25]

A Committee was formed to meticulously review the entire basis of the Code. Its members were: legal state adviser of Imperial Russia and full university professor Dr. Valtazar Bogišić, as president and editor; and councillors Duke Đuro Matanović, member of the Grand Court and the State Council; Jagoš Radović, member of the Grand Court; and Gavro Vuković, member of the Grand Court. The notary at the first reading was Nešo Zeković, and at the second, Simo Martinović, a teacher. Gavro Vuković was the only lawyer among the councillors from Montenegro.[26]

The OIZ contains six parts: Introductory rules and directives; On ownership and other types of rights embedded in the matter; On purchase and other major types of contracts; On contracts in general, as well as on other affairs, actions, circumstances which incur debts; On man and other possessors, as well as on his ownership and, generally, on disposal in the affairs of property; Explanations, designations, and addendums.

An injustice that has followed Bogišić's Code for decades is the often-repeated notion that it only provides provisions on property and obligation law. This does not convey the whole truth. It is true that in the OIZ, property law and

24 Matsumoto, 2020, pp. 123–163; Mitani, 2020, pp. 11–32; Rašović, 2020, pp. 33–91; Kasai, 2020, pp. 93–121.

25 Begović, 1955, pp. 33–42; Pupovci, 2004, p. 283; Rašović, 2016, pp. 474–496.

26 Martinović, 1958, p. 220; Bojović, 1989, pp. 125–145; Bojović, 1992, pp. 47–62.

obligations law are predominantly regulated, but it also regulates other property relations, although in a smaller number of provisions. However, this does not justify the unfair claim that the Code regulates only two types of relations.

Therefore, we emphasise that OIZ also regulated:

1. Constitutional relations (e.g., provisions on the effectuation of laws in general and their publication, and on the prohibition of retroactive effects of laws – the so-called 'retrospective' effect) – today regulated in the Constitution of Montenegro;
2. Relations with an international element (e.g., provisions on the bilateral application of national and foreign laws – today regulated by the Code on Private International Law of Montenegro);
3. Relations that in modern civil codes represent a general part of civil law (e.g., provisions on several possessors and holders of rights, provisions on property in general, etc.);
4. Family legal relations (e.g., provisions on minors and custody, birth, marriage, and death records, provisions on domestic union-household – some of which today are regulated by the Family Law of Montenegro);
5. Commercial legal relations (e.g., provisions on partnership and holding companies – a major part of these relations is now regulated by the Company Law of Montenegro);
6. Relations resulting from matters related to state property (currently regulated by the Law on State Property of Montenegro);
7. Provisions of a procedural character (e.g., provisions on declaring a missing person deceased – today regulated by the Law on Non-Litigation Procedure of Montenegro).

To conclude: the norms that regulate real legal relations (property, pledge, and servitude) and legal obligations (contracts, causation of damage, public promise of reward, unauthorised handling of another's business, wrongful use of another's property, etc.) are predominant in the OIZ. Other property relations are regulated to a much lesser extent, but they are nevertheless very significant.

The adoption of the second edition of the OIZ marked the year 1898. Bogišić carried out this work 'in the same spirit and intention' in which he compiled the first edition.[27] It was the only legal text passed that year. The orders of the Grand Court were the prevalent acts.

Prince Nikola proclaimed the second edition of the OIZ without a major ceremony, unlike the announcement of the first edition. He signed the Decree on the promulgation of the Code in Cetinje, on St. Sava Day, January 14, 1898. The

27 Ukaz Knjaza Nikole o postavljenju Opšteg imovinskog zakonika za Knjaževinu Crnu Goru dated January 14, 1898, 2004, pp. 5 and 6.

text of the Decree first states the reasons for the enactment of the second edition of the Code:

1. The first edition of the OIZ from March 25, 1888, 'being already totally excerpted', required the 'crafting of a new one'.[28]
2. Judicial practice recognised in the first edition, in that 'spacious legal book', 'some points which should advisably be, at earliest, subjected to thorough scrutiny and inspection, in order to be attuned to the newly arisen circumstances and needs that appeared in the meantime'. [29]

Valtazar Bogišić, the creator of the renowned OIZ, was the most noted personality in the legal life of Montenegro in the second half of the 19th century. The OIZ promoted Bogišić as one of the most prominent legislators in Europe. By attaining the peaks of human expression in written form, the work represents an undivided, organic, and moral whole. For his lifetime, the Code remained Bogišić's capital work, incomparable to the works of others. Apart from the prevailing institutes found in other modern codes, and those of a general character, Bogišić incorporated into the Code the institutes he found in people's customs as well as those that had just been incepted. It is recorded that he also conducted legislative work for Herzegovina and Bulgaria.[30]

Bogišić was the Minister of Justice in the Principality of Montenegro from 1893 to 1899. During his ministry in Montenegro, Bogišić issued 12 orders with the force of law meant for organising the judiciary, i.e., to enable the application of the OIZ in practice.[31] In working on these orders, Bogišić used material from a survey on legal customs related to procedural customary law. He made amendments and addendums to the second edition of the OIZ, which was promulgated by the Decree of Prince Nikola on January 14, 1898.[32] In 1894, Bogišić also drafted the Temporary Rules on Illegitimate Children, which were treated as the Law on Illegitimate Children. It mainly codified Montenegrin customary law on the basis of the conveyed survey on legal customs.[33] Bogišić also read and clarified certain abstract provisions of the OIZ to the members of the Grand Court. He organised four new district courts and carried out court inspections.[34] In November 1896, he submitted a Law on Theft to the Prince to be passed, which would replace corporal punishment for theft (whipping) with imprisonment.

28 Ibid., pp. 5 and 6.
29 Ibid., pp. 5 and 6.
30 Bojović, 1985, pp. 12–13; Solovjev, 1939, pp. 137–151; Bojović, 1985, pp. 12–13, pp. 51–65; Bojović, 1985, pp. 147–154.
31 Vuković, 1938, pp. 132– 135.
32 Pejović, 1960, pp. 147–165.
33 Nikčević, 1958, pp. 470–479; Nikčević, 1960, pp. 705–738.
34 Čalija, 1984, pp. 187–198.

3. Codification of civil law in the first half of the 20th century

The most comprehensive legislative reforms in the governance and judicial authority of the Principality of Montenegro were undertaken in 1902.

The most important legislative reforms of 1902 concerned the organisation of state governance and the judiciary. The following laws were adopted:

1. Law on Princely Government and State Council (December 6/19);[35]
2. Law on Civil Servants (December 6/19);[36]
3. Law on Judicial Authority (December 6/19);[37]
4. Law on the Organisation of Courts in the Principality of Montenegro (December 6/19);[38]
5. Law on Criminal Jurisdiction (December 6/19);[39]
6. Law on Succession to the Throne (December 6/19).[40]

On the occasion of the proclamation of state reforms on St. Nicholas' Day of 1902, Prince Nikola gave a speech. He first recalled that two years earlier, at the request of the State Council, he had been given the title of Royal Highness to be passed on to his successor to the throne. At that time, he promised that he would carry out the needed reforms in state governance, which would 'improve and ensure the development of governance' on a legal basis. The first condition of state development, he said, was 'the legal structuring of the Princely Government and the State Council'. To this end, he issued an order for the law to be amended. The law, 'among other useful decrees, rightly indicates the ministerial responsibility towards the sovereign, in order to ensure better order and administration of this country'.[41]

Another important reform of that year concerned the administration of justice. The Prince paid utmost attention to that branch, 'adding the amendments' in order to legally 'arrange its administration'. In his speech, he stated that it was not easy to replace 'with a stroke of a pen the highest judicial body, which, almost as hereditary, has alternated at the head of justice in our homeland since the earliest times.' Since ancient times, justice had been dispensed by 'our fine heroes, dukes, serdars and country's leaders'. However, the sovereign had the last word. Justice was distributed 'under the roof and under the trees, in the open sky and

35 Crnogorski zakonici, 1998b, p. 582.
36 Crnogorski zakonici, 1998b, p. 593.
37 Crnogorski zakonici, 1998b, p. 607.
38 Crnogorski zakonici, 1998b, p. 610.
39 Crnogorski zakonici, 1998b, p. 620.
40 Crnogorski zakonici, 1998b, p. 626.
41 Glas Crnogorca, no. 49, dated December 7, 1902.

in the camps'. Prince Nikola himself had followed the same method of trial and 'acted by it many times'.[42]

The trials

> 'of the justice executors showed the brightness and a common sense wisdom of highlanders, the dignity of free people and the pride of the house and the tribe; showed beautiful national costumes and shining guns in their full brilliance; were distinguished by innate eloquence and righteousness, for if it were not for it, who would then make up our heroic camp'.[43]

In his speech, Prince Nikola expressed full gratitude and recognition 'to those old customs and people'. But he declared that the coming times demanded parting with them, as the spirit of a new era 'and the much needed development of the state today ask for other men, other heroes; heroes of science, heroes of work'. From the new justice executors, he demanded:

> 'to distribute justice in this way, following the law, within the designated workframe, without shiny weapons, without national costumes, but in modest, civil, and European clothes, without any blaze other than the one reflected by the golden covers of the Holy Gospel placed between two silver candlesticks on the court table, without shouting and gasping, intended anyway more for the gallery than to serve the justice, and to distribute it fiercely.'

What does it mean to dispense justice fiercely? It means 'to be consciously impregnated with the sanctity of justice; it is to be inspired by the spirit of actual written and unwritten customary laws; it means the judge's fearlessness before an arbitrary will'.[44]

He had a special message for judges: 'May judge lay his head, but never his soul, not even to his Master.' Further, he recalled the provision of Art. 172 of Dušan's code: 'All judges should judge according to the code, solely by that which is written in the code, and not in fear of his words, so I say'. Such distribution of justice was his 'bequest to God'; it was, 'along with the crown, his sacred ought' – 'the beacon of the independence and crystallisation' of the Principality. He described himself as 'the intercessor of the sovereign Saint Peter, my glorious ancestor, as well as of those who were before Him and who followed after Him'.

42 Ibid.
43 Ibid.
44 Ibid.

Thus, he demanded that justice 'be and remain the milestone in this early stage of development and progress of our beloved homeland'.[45]

In his speech held on St. Nicholas Day, December 6/19, 1905, before the People's Representation, Prince Nikola in his seat proclaimed the Constitution for the Principality of Montenegro. It was the first Constitution of Montenegro.

In the first half of the 20th century, the civil law in the Principality of Montenegro was regulated by the following laws:

1. General Property Code for the Principality of Montenegro (first edition, 1888);
2. General Property Code for the Principality of Montenegro (second edition, 1898);
3. Law on Public Sales of Real Estate (November 10/23, 1900);[46]
4. Law on Expropriation (July 5/18, 1906);[47]
5. Law on Releasing the Free Bar Pier for Public Traffic (January 31 / February 13, 1909);[48]
6. Law on Division, Settlement, and Usage of Brivska Gora (February 9/22, 1910);[49]
7. Law on Concession for Draining the Ulcinj Valley (March 5/18, 1910).[50]

The right to insurance was regulated by the following laws:

1. Law on Insurance Companies in the Principality of Montenegro (May 27 / June 10, 1904); [51]
2. Law on Amendments to the Law on Insurance Companies in the Principality of Montenegro of May 27, 1904 (June 16/27, 1909);[52]
3. Law on Amendments to the Law on Insurance Companies in the Principality of Montenegro of May 27, 1904 (June 16, 1909).[53]

After accepting the 'proposal of the People's Representation and giving it lawfulness with his signature', Prince Nikola proclaimed 'in the name of God, our Fatherland as Kingdom, and myself as, by God's grace, the Heir King of Montenegro' in Cetinje, on the Great Lady's Day of 1910.[54]

The Law on the Proclamation of the Principality of Montenegro as a Kingdom was also published in *Glas Crnogorca*. The law contained five articles.

45 Ibid.
46 Crnogorski zakonici, 1998b, p. 481.
47 Glas Crnogorca, no. 27, dated July 8, 1906.
48 Glas Crnogorca, no. 6, dated January 31, 1909.
49 Glas Crnogorca, no. 10, dated February 23, 1910.
50 Glas Crnogorca, no. 18, dated April 17, 1910.
51 Crnogorski zakonici, 1998b, p. 928.
52 Glas Crnogorca, no. 48, dated December 3, 1905.
53 Glas Crnogorca, no. 28, dated June 27, 1909.
54 Glas Crnogorca, no. 35, dated August 15, 1910.

Article 1 stated: 'The Principality of Montenegro is proclaimed the Kingdom of Montenegro.' Article 2 declared: 'Prince Nikola I Petrović Njegoš is declared a successor, by the grace of God, King of Montenegro. The King and the Queen will bear the title 'Royal Majesty''. Article 3 was dedicated to the heir to the throne: 'The heir to the throne, Prince Danilo, is declared heir to the Royal throne of Montenegro. The heir to the throne, the Crown Princess, and their children will bear the title of 'Royal Highness''. Article 4 defined the title of the children: 'All other children of Their Majesties, male and female, receive the title 'Royal Highness', and the grandchildren of these children retain the title 'Highness''. The last article of the law referred to the day of its entry into force, including the recommendation and an order:

> 'This law enters into force when signed by Prince Lord, and by it the titles of Prince, Princely, etc. are replaced with King, Royal, etc. It is recommended to our President of the Ministerial Council, the Minister of Foreign Affairs, and the representative of the Minister of Justice to promulgate this law, and to all our ministers to ensure its implementation; to the authorities we command to act according to it, and to each and everyone to obey it.'[55]

The law was signed in Cetinje on August 15, 1910. On this occasion, King Nikola addressed the Montenegrins with a lauding speech.[56]

Legislative activity in the Kingdom of Montenegro continued. From the proclamation of Montenegro as a Kingdom (August 15/28, 1910) until the beginning of December 1915, nearly 50 laws were passed, among them especially important ones such as the Law on Money and the Law on Ores. In 1913, the third edition of the OIZ was published, in which, compared to the second edition, three words were replaced: Prince, Principality, and Crown with King, Kingdom, and Perper, respectively.

In terms of the quality of legal solutions, this period cannot be compared, for a number of reasons (including the conditions of war), with the period of the Principality of Montenegro after its international recognition at the Berlin Congress. The latter period can rightly be described as the golden era of Montenegrin legislation.

After the end of the First World War, the Federal state of Yugoslavia was created in 1918. In the new state, preparations began for the adoption of a Civil Code, followed by discussions and polemics in legal science about the basis of the future Civil Code. The dominant opinion was that the Austrian Civil Code should serve as the main background of the future Civil Code. A smaller

55 Glas Crnogorca, no. 35, dated August 15, 1910.
56 Glas Crnogorca, no. 36, dated August 19, 1910.

number of theorists considered this a mistake. The renowned Professor Mihailo Konstantinović exclaimed:

> 'The reference to the Austrian civil law is, from the national-political aspect, a mistake. Yugoslavia should have a Yugoslav code, created according to the needs of Yugoslavs. It should serve as one of the tools for the creation of Yugoslavia. As it happens, there is no awareness about the educational power of law in certain circumstances. It is quite understandable, but one easily forgets that it is not advisable to introduce the spirit of a collapsed order into a revolutionary creation, such as our country. Victorious Rome had a bad experience with defeated Greece. The question is simple, and it boils down to whether we want Yugoslavia to be an imitation of Austria, or a country that will have its own spirit and its own physiognomy'.[57]

He continued:

> 'There is a Code in our country that is very little discussed, which is one of the best in the world: it is Bogišić's *General Property Code for Montenegro*. It was designed by our man, whose expertise in the field was exceptional, for a part of our people, and whose spirit is much more familiar to the vast majority of our people than the Austrian one'.[58]

However, Yugoslavia never received its own unique civil code. On the territory of Yugoslavia at that time, legal particularism was in effect. In Montenegro the OIZ was applied; in Serbia, the Serbian Civil Code; in Croatia and Slovenia, the General Civil Code; and in Bosnia and Herzegovina, as well as in Macedonia, the Ottoman Civil Code (*Mecelle*) and customary law were applied.[59]

Extensive debates arose among legal scholars and politicians in former Yugoslavia between the two world wars over what should serve as the foundation of the future civil code. It was even decided by the competent Yugoslav authorities that the Austrian Civil Code, whose application had been extended to Croatia by the imperial patent of 29 November, 1852, during the period of absolutism, would serve as the basis. Regarding property law, it was planned that only stylistic modifications would be made to the code before submitting it for enactment.

However, part of the authoritative legal doctrine advocated that the OIZ should serve as the foundation of the future Yugoslav civil code. In this respect,

57 Konstantinović, 1982a, p. 388.
58 Ibid., p. 392.
59 Veress, 2023, pp. 209–210.

Professor Mihailo Konstantinović was particularly prominent, as he believed that only in this way could Yugoslavia, in the near future, adopt a code that would meet all the requirements of a proper civil code – one that would satisfy the needs of the people 'and be, in every respect, of the highest quality'.[60] Despite numerous efforts, Yugoslavia, both between the two world wars and in the period following the Second World War, never adopted a unified civil code.

The Law on the Nullity of Legal Provisions Adopted Before 6 April 1941 and During the Enemy Occupation, dated 23 October, 1946, determined the fate of legal provisions (laws, decrees, orders, regulations, etc.) adopted by the authorities of the occupiers and their collaborators in the territory of Yugoslavia during the occupation. These provisions were declared null and void.[61] Legal provisions (laws, decrees, orders, regulations, etc.) that were in force on 6 April, 1941, also lost their legal force.[62] Consequently, the following codes, among others, ceased to have legal effect: the OIZ, the Serbian Civil Code, the Austrian Civil Code, and the *Mecelle*.

Among the prominent legal writers of civil law in that period, the professors of the Law Faculty in Belgrade, Andra Đorđević and Živojin Perić, stand out.

4. Codification of civil law in the second half of the 20th century

After the Second World War, in socialist Yugoslavia and in Montenegro, legal continuity with the civil law of the former Yugoslavia ceased. The Law on the Invalidity of Legal Regulations passed before April 6, 1941 and During the Enemy Occupation of October 23, 1946, abolished both the legal regulations valid before April 6, 1941 and those in force during the occupation, as well as court decisions made in that period. With the adoption of this Law, legal continuity with the first Yugoslavia was broken. It stipulated that all legal norms in force up to April 6, 1941 were abolished. The OIZ, the Serbian Civil Code, and the Austrian Civil Code suffered the same fate.[63]

However, the application of legal rules contained in the abrogated laws and other legal regulations was permitted under the following conditions: (1) in the case of a legal gap, (2) if they were not in conflict with the Constitution or other valid regulations, and (3) if they were not contrary to the principles of the constitutional order. Accordingly, the court was obliged to determine in each specific case whether the application of a particular legal rule from the abrogated law was

60 Konstatinović, 1982, p. 392.

61 Art. 1 of Zakona o nevažnosti pravnih propisa donijetih prije 6.aprila 1941.godine i za vrijeme neprijateljske okupacije.

62 Art. 2 of Zakona o nevažnosti pravnih propisa donijetih prije 6.aprila 1941.godine i za vrijeme neprijateljske okupacije.

63 Veress, 2023, pp. 209–210.

permitted under the Law on Invalidity. Likewise, the court had to verify whether a particular application was incompatible with the provisions of this Law. Courts could not dismiss an assessment in a general way or rely on the abstract claim 'that a certain rule from the old law is not valid as a legal rule', without further elaboration.[64]

By allowing the application of earlier legal rules, the Law did not equate them with new regulations:

> 'It gave to them the significance of material that the courts may consult in solving disputes. The courts cannot ignore them or reject them as contrary to the principles of the constitutional order without explanation, but they still do not have the force of law even when they do not contradict the principles of the constitutional order... The distinction between legal regulations and legal rules was apparently intentionally made for this purpose, although the difference itself could otherwise be questionable. The so-called legal rules are not firm rules of law, but rather flexible material available to the judge, to be used in the best possible way to fill the gap created by the collective abrogation of the legal force of all previous regulations... The weakened force of legal rules and the constitutional aspiration towards a unified legal system allow the judge to take in consideration not only the legal rules of his own area but also the legal rules of other areas'.[65]

With the termination of the validity of the OIZ in 1946 – a masterpiece in legislation, acclaimed 'in the entire legal world' and 'unanimously welcomed' – the legal order of Montenegro was for a long time left without laws that could comprehensively regulate civil rights in a reliable and competent manner. This 'vacuum' was 'filled' with the legal rules of the abrogated pre-war law, which continued to be applied under the provisions of the Law on the Invalidity of Legal Regulations Passed Before April 6, 1941 and During the Enemy Occupation.

State socialist property in the former Yugoslavia was established after the Second World War. Through nationalisation and other measures, many assets became state property. The state emerged as an economic entity, and the property rights of private owners were significantly restricted.

With the entry into force of the Law on the Nationalisation of Private Business Enterprises[66], all relevant private business enterprises at the national and republican level were nationalised and transferred to state ownership in the

64 Rešenje Vrhovnog suda FNRJ, Gz 24/51 dated November 1951, Zbirka odluka vrhovnih sudova 1945-1952, vol. 1. (Beograd, 1952), no. 145, p. 160.

65 Konstantinović, 1982b, pp. 540–548.

66 Službeni list FNRJ, no. 98/46 and 35/48.

following economic sectors: 1) mining and extractive industry; 2) metallurgy; 3) oil and derivatives industry (natural and artificial); 4) natural gas industry; 5) coal processing industry; 6) railway and transport material industry; 7) machinery and tools industry; 8) shipbuilding; 9) automotive industry; 10) agricultural tools and machinery industry; 11) metal processing industry; 12) electrical industry; 13) production of electricity and gas (power and gas plants); 14) military and pyrotechnic industry; 15) wholesale chemical industry; 16) electrochemical industry; 17) metal alloys industry; 18) chemical processing of wood, matches, compressed gases, water glass, carbon black, paints, varnishes, felts and gelatin, soap and glycerine, resin, wax, cleaning grease, lubricants, and other chemical industries; 19) graphic and printing industry; 20) pulp, cellulose, paper, and paper processing industry; 21) concrete, plaster, glass, ceramics, porcelain, faience, asbestos, and refractory materials industry; 22) non-metallic minerals and stone industry; 23) leather, fur, and rubber industry (natural and artificial); 24) textile industry (natural and artificial); 25) sawmill and wood processing industry; 26) construction materials industry; 27) sugar, spirits, starch, yeast, and dextrin industry; 28) vegetable oil industry and refineries; 29) milling, pasta, and flour processing industry; 30) meat, fat, fish, fruit, vegetable, and milk processing industry; 31) mineral water (natural and artificial), soda, and ice industry; 32) other food industries; 33) tobacco and alkaloid industry; 34) brewing, alcohol, and soft drinks industry; 35) pharmaceutical industry, sanitary materials and accessories, chemical pharmaceuticals, and cosmetics; 36) construction and design; 37) forestry industry; 38) banking and insurance; 39) exploitation of spas and healing waters; 40) wholesale trade; 41) land, air, sea, river, and lake transport; 42) other transport.

From the date the Law entered into force, all private commercial warehouses of 100 tons and above, as well as private commercial and industrial cellars of three wagons and above – with their auxiliary facilities – were nationalised and converted into state property. Which warehouses and cellars were to be considered as nationalised was determined by a decision of the Government of the People's Republic, issued within three days after the Law was passed.[67]

A nationalised company became a state-owned business enterprise by the act of nationalisation under the Basic Law on State-owned Business Enterprises and was required to comply with its provisions by decision of the competent government authority. A state-owned business enterprise established in this way assumed all obligations of a nationalised private enterprise up to the amount of its assets. However, the following obligations were not transferred to the state or state-owned enterprises: 1) obligations incurred from business operations outside the scope of the enterprise itself; 2) obligations incurred during the war or from working for the enemy; 3) obligations arising from illegal trade and speculation; 4) obligations resulting from the company's over-indebtedness; and 5) obligations

67 Art. 2b of Zakona o nacionalizaciji privatnih privrednih preduzeća.

arising from contracts with employees and members of company bodies.[68] From the date the Law entered into force, all intangible properties owned by foreign citizens, institutions, or private or public legal entities were nationalised and became state property. Excluded from this were: 1) intangible property of peasants and farmers cultivating their own land; 2) residential buildings serving mainly as the owner's residence; and 3) intangible properties of diplomatic missions of foreign countries used for official purposes.

In 1946, Yugoslavia adopted the Basic Law on Marriage.[69] The central government also passed the Law on Inheritance in 1905.[70] In 1980, Socialist Yugoslavia passed the Law on the Basics of Property-Legal Relations,[71] and in 1978 the Law on Obligation Relations.[72]

The Law on Obligations is considered the best and most comprehensive legislative act in Yugoslavia after the Second World War. Its main author was Mihailo Konstantinović, Professor at the Faculty of Law in Belgrade. This law, with slight modifications, was adopted by all the former Yugoslav republics, which are today independent states. Professor Konstantinović also authored the highly regarded Law on Inheritance of 1955 and the Basic Law on Marriage of 1946. Alongside Valtazar Bogišić, many rightly consider Professor Konstantinović one of the most accomplished legislators and civil law specialists in the territories of the independent states that once formed Yugoslavia.

5. Codification of civil law in the present

After the referendum held in 2006, Montenegro became an independent state.

The Law on Property Relations, alongside the Constitution of Montenegro and international conventions and protocols, is the main source of general property-law relations. Under the conditions set forth by the Law on the Invalidity of Legal Regulations, the legal rules of former civil laws – primarily of the OIZ – may still be applied. Montenegro does not yet have a unified civil code, but one is in preparation. It is expected that its norms will comply with tradition, customs, and the extraordinary rules established in the OIZ.

The Law on Property Relations (ZOSPO) is the most important and comprehensive law in Montenegro regulating property rights and other real rights. ZOSPO 'affirms' that the right to property is the most important real right, consistent with

68 Art. 5 of Zakona o nacionalizaciji privatnih privrednih preduzeća.
69 Službeni list FNRJ,no.29/46;36/48;44/51;18/55. The revised text of this law was published in the Službeni list SFRJ, no. 28/65.
70 Službeni list FNRJ, no. 20/55.
71 Službeni list SFRJ, no. 6/80 and 36/90, Službeni list SRJ, no.29/96.
72 Službeni list SFRJ, no.29/78, 39/85, 45/89, Službeni list SRJ, no.31/93, Službeni list SCG, no. 1/2003.

its treatment in comparative legislation. This can be clearly seen from a review of its basic provisions. The legislator particularly 'sets apart' and contrasts property rights with other, narrower real rights. This is evident in provisions such as: 'This law regulates property rights and other real rights…',[73] 'Subjects of property rights and other real rights…'[74] 'Objects of property rights and other real rights…'[75] 'Property rights and other real rights are exercised…'[76] 'It is forbidden to exercise property rights and other real rights…'.[77]

In the practice of the European Court of Human Rights in Strasbourg, the scope of this right has also been extended to other property rights, especially claims. This leads to the conclusion that it does not always have to concern a real right. The importance of property rights is such that the authors of ZOSPO made it a central institute. ZOSPO defines the right to property as the most complete legal possession of assets.[78]. Furthermore, it lists the rights of the owner and the limits of their exercise: 'The owner has the right to keep his asset, to use it, and to dispose of it within the limits set by law'.[79] The same article also emphasises the passive obligation of an unspecified number of third parties: 'Everyone is obliged to refrain from infringing the property rights of another person'.

The subjects of property rights are natural persons and legal entities.[80] With regard to the objects of property rights, the legislator did not expand their scope but limited them to individually determined tangible and intangible assets.[81] The Law also regulates the extent of property rights: 'The right of the property owner includes the space above the surface and a part of the land below the surface of the real estate, unless otherwise determined by law'.[82] The nature and purpose of assets determine the manner in which property rights are exercised. This is firmly set forth in Art. 4 of ZOSPO: 'Property rights and other real rights are exercised in accordance with the nature and purpose of the asset, in the manner and under the conditions prescribed by law.'

The Law also provides an objective conception of the prohibition of misuse of rights: 'It is prohibited to exercise property rights and other real rights contrary to the purpose for which they have been established or recognised by law.'[83]

In addition to individual rights, ZOSPO emphasises the social function of property:

73 Art. 1 of Zakona o svojinsko pravnim odnosima.
74 Art. 2 of Zakona o svojinsko pravnim odnosima.
75 Art. 3 of Zakona o svojinsko pravnim odnosima.
76 Art. 4 of Zakona o svojinsko pravnim odnosima.
77 Art. 5 of Zakona o svojinsko pravnim odnosima.
78 Art. 6, para. 1 of Zakona o svojinsko pravnim odnosima.
79 Art. 6, para. 2 of Zakona o svojinsko pravnim odnosima.
80 Art. 2 of Zakona o svojinsko pravnim odnosima.
81 Art. 3 of Zakona o svojinsko pravnim odnosima.
82 Art. 8 of Zakona o svojinsko pravnim odnosima.
83 Art. 5 of Zakona o svojinsko pravnim odnosima.

> 'Property obliges, and in exercising his right, the owner is obliged to act with consideration for the general interest as well as the interests of others. The property owner must not exercise his ownership right beyond the limits prescribed to all owners of such properties by this or a special law, for the protection of the interests and safety of the state, nature, the environment, and public health. If the owner of an asset is subjected to restrictions for the protection of the interests and safety of the state, nature, the environment, or public health, which require a considerable sacrifice from him but not from other owners of such assets, he has the right to compensation for expropriation'.[84]

Generally, the legislator prescribes two types of restrictions on property rights: (1) in the public interest; (2) in one's own interest (in a broader sense: private interest). Art. 10 of ZOSPO provides:

> 'Property rights can be limited by law. No one can be deprived of the right to property unless required by the public interest, as determined by law or on the basis of law, including compensation that cannot be less than fair. The owner may, for a purpose not prohibited, limit or encumber his right. If the owner, by a legal act, determines a ban on the alienation or encumbrance of the asset, this ban applies to third parties if registered in the intangible property cadastre. Limitation of property rights on tangible assets to secure a claim is effective against third parties if listed in the relevant public register or if the third party was aware or could have been aware of it'. [85]

In Montenegro, the matter of civil law (property law) has not yet been codified by a single civil code, but a large number of special laws and other regulations in that area have been adopted. These include, for example: the Law on Property Relations[86], Law on Obligations[87], Law on Inheritance[88], Family Law[89], Law on State Property[90], Law on Concessions[91], Law on Personal Name[92], Law on Civil Registry[93],

84 Art. 9 of Zakona o svojinsko-pravnim odnosima.
85 Art. 10 of Zakona o svojinsko-pravnim odnosima.
86 Službeni list CG, no. 19/2009.
87 Službeni list CG, no. 47/2008, 4/2011 – dr. zakon and 22/2017.
88 Službeni list CG, no. 74/2008 and 75/2017.
89 Službeni list CG, no. 1/2007 and Službeni list CG, no. 53/2016 and 76/2020.
90 Službeni list CG, no. 21/2009 and 40/2011.
91 Službeni list CG, no. 8/2009 and 73/2019.
92 Službeni list CG, no. 47/2008 and 40/2011.
93 Službeni list Crne Gore, no. 47/08 dated 07.08.2008, 41/10 dated 23.07.2010.

Law on the Central Population Register[94], Law on Non-litigation Procedure[95], Law on Expropriation[96], Law on State Survey and Real Estate Cadastre[97], Law on Pledge as a Means of Securing Claims[98], Law on Non-Governmental Organizations[99], Company Law[100], Law on Electronic Commerce[101], Law on Securities[102], Law on Bills of Exchange[103], Law on Insolvency of Business Companies[104], and others.

A series of Montenegrin laws regulate special legal property regimes. In this section, we will list the most important laws.

Special ownership regimes apply to intangible assets with regard to their purpose. These include construction land, agricultural land, forests, and forest land. Legal ownership relations concerning these intangible possessions are regulated by: the Law on Spatial Planning and Construction of Structures[105], the Law on Agricultural Land[106] and the Law on Forests[107].

Special ownership regimes apply to natural assets, flora, and fauna. These include the sea, the sea coast, islands, maritime resources, waters, water resources, water objects, protected natural resources, mineral assets, and wild species. Legal ownership relations concerning these assets are regulated by: the Law on the Sea[108], the Law on Maritime Property[109], the Law on Waters,[110] the Law

94 Službeni list RCG, br. 49/2007 i Službeni list CG, no. 41/2010, 40/2011 and 55/2016.
95 Službeni list RCG, no. 27/2006 and Službeni list CG, no. 20/2015, 75/2018 and 67/2019.
96 Službeni list Republike Crne Gore, no. 055/00 dated 01.12.2000, 012/02 dated 15.03.2002,028/06 dated 03.05.2006, Službeni list Crne Gore, no. 021/08 dated 27.03.2008, 030/17 dated 09.05.2017 and Zakon o izmjenama i dopunama Zakona o eksproprijaciji, Službeni list CG, no. 75/2018.
97 Službeni list RCG, no. 29/2007 and Službeni list CG, no. 32/2011, 40/2011, 43/2015, 37/2017 and 17/2018.
98 Službeni list RCG, no. 38/2002 dated 26.7.2002.
99 Službeni list CG, no. 39/2011 and 37/2017.
100 Službeni list RCG, no. 65/2020.
101 Službeni list RCG, no. 80 dated 29.12. 2004, Službeni list Crne Gore, no. 41 dated 23.07.2010.
102 Službeni list RCG, no. 59/00, 10/01, 43/05, 28/06.
103 Službeni list RCG, no. 45/05 dated 28.07.2005.
104 Službeni list RCG, no. 06/02, 01/06 and 02/07.
105 Službeni list CG, no. 64/2017, 44/2018, 63/2018, 11/2019 – amended and 82/2020.
106 Službeni list RCG, no. 15/92 dated 10.04.1992, 59/92 dated 22.12.1992, 27/94 dated 29.07.1994, 73/10 dated 10.12.2010, 32/11 dated 01.07.2011.
107 Službeni list Crne Gore, no. 074/10 dated 17.12.2010, 040/11 dated 08.08.2011, 047/15 dated 8.08.2015.
108 Službeni list Crne Gore, no. 17/07 dated 31.12.2007, 06/08 dated 25.01.2008, 40/11 dated 08.08.2011.
109 Službeni list RCG, no. 14/92 dated 03.04.1992, 59/92 dated 22.12.1992, 27/94 dated 29.07.1994. and Službeni list Crne Gore, no. 51/08 dated 22.08.2008, 21/09 dated 20.03.2009, 73/10 od 10.12.2010, 40/11 dated 08.08.2011.
110 Službeni list RCG, no. 27/2007 and Službeni list CG, br. 32/2011, 47/2011 - amended, 48/2015, 52/2016, 2/2017, 80/2017, 55/2016 and 84/2018.

on Nature Protection[111], the Law on National Parks[112], the Law on Mining[113], and the Law on Wildlife and Hunting.[114]

Special ownership regimes apply to cultural assets, including archival, library, and museum material. Ownership relations concerning these assets are regulated by: the Law on the Protection of Cultural Property[115], the Law on Archival Activity[116], the Law on Library Activity[117], and the Law on Museum Activity.[118]

Special ownership regimes apply to public roads, roads within the territories of municipalities, municipal and uncategorised roads, communal infrastructure, communal facilities, railway infrastructure, electronic communication networks and infrastructure, energy facilities, and mining facilities and plants. Ownership relations concerning these assets are regulated by: the Law on Roads [119], Law on Communal Activities[120], Law on State Property[121], Law on Railways[122], Law on Electronic Communications[123], Law on Energy[124], and Law on Mining.[125]

Special ownership regimes apply to ports, maritime facilities, and watercrafts (ships, yachts, and boats). Legal ownership relations concerning these objects are regulated by: the Law on State Property, the Law on Ports[126], the Law on Safety of Maritime[127], the Law on the Manner of Registration of Ships, Floating Objects, and Installations for the Production of Hydrocarbons in the Registers and on Real Rights on Ships and Installations for the Production of Hydrocarbons[128], the Law on Sea Protection Against Pollution from Vessels[129], and the Law on Yachts [130].

111 Službeni list Crne Gore, no. 054/16 dated 15.08.2016, 018/19 dated 22.03.2019.
112 Službeni list Crne Gore, no. 028/14 dated 04.07.2014, 039/16 dated 29.06.2016.
113 Službeni list Crne Gore, no. 65/08 dated 29.10.2008, 74/10 dated 17.12.2010, 40/11 dated 08.08.2011.
114 Službeni list Crne Gore, no. 052/08 dated 27.08.2008, 040/11 dated 08.08.2011,048/15 dated 21.08.2015.
115 Službeni list Crne Gore, no. 49/10 dated 13.08.2010.
116 Službeni list Crne Gore, no. 049/10 dated 13.08.2010, 040/11 dated 08.08.2011.
117 Službeni list Crne Gore, no. 049/10 dated 13.08.2010, 040/11 dated 08.08.2011.
118 Službeni list Crne Gore, no. 49 dated August 13, 2010.
119 Službeni list CG, no. 82/2020.
120 Službeni list Crne Gore, no. 055/16 dated 17.08.2016, 074/16 dated 01.12.2016, 002/18 dated 10.01.2018, 066/19 dated 06.12.2019.
121 Službeni list CG, no. 21/2009 and 40/2011.
122 Službeni list Crne Gore, no. 27/13 dated 11.06.2013, 43/13 dated 13.09.2013.
123 Službeni list CG, no. 40 dated August 13, 2013, 56/13, 2/17.
124 Službeni list Crne Gore, no. 005/16 dated 20.01.2016, 051/17 dated 03.08.2017, 082/20 dated 06.08.2020.
125 Službeni list Crne Gore, no. 65/08 dated 29.10.2008, 74/10 dated 17.12.2010.
126 Službeni list CG, no. 51/2008, 40/2011, 27/2013 and 18/2019.
127 Službeni list CG, no. 62/2013, 6/2014, 47/2015, 71/2017, 34/2019, 77/2020.
128 Službeni list CG, no. 34/2019 dated 21.6.2019, which entered into force 29.6.2019.
129 Službeni list Crne Gore, no. 020/11 dated 15.04.2011, 026/11 dated 30.05.2011, 027/14 dated 30.06.2014.
130 Službeni list RCG, no. 46/07 dated 31.07.2007, 73/10 dated 10.12.2010, 40/11 dated 08.08.2011, 42/15 dated 29.07.2015.

Special ownership regimes apply to airspace, airports, and aircrafts. Legal ownership relations concerning these assets are regulated by: the Law on State Property, the Law on Air Traffic[131], the Law on Obligations and Basics of Proprietary Right in Air Transport[132], and the Law on Amendments to the Law on Obligations and Fundamentals of Property-Legal Relations in Air Traffic, adopted on June 26, 2018.

6. Future trends in legal codification

Since the OIZ of 1888, Montenegro has not had a unified civil code. Since its restoration as an independent state in 2006, Montenegro has continued with partial codification of civil law through the enactment of specific laws. These laws preserved continuity with earlier legislation while also following modern principles of civil law and taking into account the relevant positions of court practice in Montenegro and the European Union.

Through this partial regulation, some deficiencies have been identified, primarily concerning inconsistencies and terminological incongruities among laws. For this reason, the Government of Montenegro passed the Decision on the Establishment of the Commission for the Drafting of the Civil Code of Montenegro in 2017. Due to frequent changes in government members, especially Ministers of Justice who served as heads of the Commission, the work on drafting the Civil Code was delayed. To date, the Commission has prepared five parts of the Civil Code: the general part, property law, obligation law, inheritance law, and family law. The part related to personality rights is still to be completed, as it is intended to provide a thorough regulation of these rights to an even greater extent than in some comparative legislations.

With the Civil Code in preparation, Montenegro will regulate civil law in the most exhaustive manner. It will provide a more accurate expression of the principles and spirit of the whole, ensure greater consistency of solutions, appropriately fill legal gaps and avoid repetitions, facilitate application, and enable high-quality interpretation. The Code is expected to represent an integrated, organic, and harmonious unity.

In its work, the Commission for Drafting the Civil Code of Montenegro adhered to the following requirements, principles, and positions:

- Achieving greater legal security as the main attribute of the rule of law;
- Considering the positions of court practice for the complete and harmonious regulation of civil law matters in one code;

131 Službeni list CG, no. 30/2012, 30/2017 and 82/2020.
132 Službeni list CG, no. 18/11 and 46/14.

- Providing legal continuity with civil law norms of existing laws and with the enduringly relevant rules of the OIZ;
- Following modern comparative legal solutions (France, Germany, Italy, Hungary, the Netherlands, Poland, Czech Republic, Ukraine, Estonia, Romania, Quebec, etc.);
- Aligning with the legal acquis of the EU, ratified international conventions, and the practice of the European Court of Human Rights;
- Recognising the importance of the Civil Code for the development of legal awareness and legal culture;
- Ensuring that the Civil Code delivers a comprehensive and creative synthesis of successful solutions from existing laws, not merely by summing them up but by giving them a modern shape consistent with current legal theory and practice.

In the working materials for the future Civil Code of Montenegro, a particular novelty in terms of comprehensive regulation is the inclusion of provisions on personality rights. According to the current draft, the section dealing with personality rights will contain approximately 80 articles, making it one of the most comprehensive codifications of this matter in Europe.

The provisions on personality rights in the future Civil Code of Montenegro will cover: introductory provisions (principles); human dignity; the right to life; the right to bodily integrity; the right to health; the right to liberty; the right to honour and reputation; the right to mental integrity; the right to a name; the right to privacy; the right to private life; the right to one's image and voice; the right to the protection of personal data; the right to sexual freedom; the right to identity; the right to be forgotten; the right to piety; the right to remembrance; and the right to post-mortem protection. Furthermore, civil-law protection of personality rights is also envisaged, which may be exercised through a variety of claims. These claims are given special attention in the future Civil Code of Montenegro.

In recognition of its overall exceptionality, modernity, continuous relevance, and distinction, the seventh part of the Civil Code will most likely include 45 famous legal sayings from the end of the OIZ of 1888, created by Valtazar Bogišić.

In composing these sayings, Bogišić, in his own manner, distilled what was truly valuable from the available law and drew upon reflections from ancestral heritage, masterfully expressed in words, to integrate them into the Code while maintaining the form and rhythm of national sayings. This stylistic choice arguably makes the Code one of the most accomplished among all legal codes. The inexhaustible source of Roman law, upon which European law was built, allowed Bogišić to formulate sayings concisely, making them easily remembered and gladly quoted. Even today, the echo of Bogišić's jurisprudential sayings can be heard in academic lectures and civic studies.

Even without the eighth section of its sixth part, the OIZ would remain a remarkable Code. With this section, the Code represents a glorious creation of its author and the country for which it was enacted. Bogišić 'dressed up' concise, clear, and precise Latin sayings in the vernacular, giving them the most comprehensible style. He was an exceptional connoisseur of Justinian's *Digesta* and *Codex*, Theodosian *Codex*, Gaius' *Institutions*, and other pre-Justinian collections. Although the main sayings were placed in a separate section (the eighth section of the sixth part), the entire text of the Code resonates with them. Bogišić's mastery allowed him to infuse enduring Roman legal principles into the vernacular. The carefully gathered results of centuries of legal experience gave the OIZ a rhythm inherent only to folk proverbs, demonstrating his literary talent, especially in folk literature.

This section remains relevant over time: it is acclaimed in academic circles and continues to inspire legal scholars and practitioners. Lawyers in these regions often refer to it as a guide in complex cases that the legislator could not have anticipated. Professors, judges, and lawyers alike attest that Bogišić's sayings serve as a 'compass of common legal sense'.

By communicating the *regulae iuris* in a unique manner, Bogišić contributed to the preservation of Roman law as received in these areas. He understood that Latin proverbs encapsulate collective wisdom drawn from centuries of experience. Bogišić's legal sayings are elaborated in depth and masterfully diffused throughout the Code, neatly formulated so that they may be 'digested' without overburdening the reader.[133]

Aided by Montenegro's legal institutions and the bright minds of judges without formal schooling, Bogišić cultivated a national legal treasure. Although seemingly simple, his sayings are intricate and complex in their details. His work would have been significantly poorer without his mastery of language, and his sayings would not resonate as they do if they were not adapted to the people's common sense.

By the end of 2025, Montenegro is expected to have the full text of the Civil Code. Its adoption is anticipated in 2026, following several readings and expert-led public discussions. This will be the second Civil Code in Montenegro's history, the first being the acclaimed OIZ of 1888.

133 Vojinović, 1989, p. 76.

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- *Zakon o željeznici* (Law on Railways), Službeni list Crne Gore, (Official Gazette of Montenegro), no. 27/13 dated 11.06.2013, 43/13 dated 13.09.2013.
- *Zakonik Opšti crnogorski i brdski* (The General Code of Montenegro and the Highlands).