

Judicial Application of International Law in Montenegro

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1 Effect Afforded to International Law by the Constitution

The Constitution of the Republic of Montenegro (the Constitution) stipulates that ‘ratified and published international agreements (treaties) and generally accepted rules of international law represent an integral part of the national legal system, possess primacy over domestic legislation, as well as direct effect whenever they regulate a social relation differently from internal legislation’.¹

The Constitution envisages also that a law must be in conformity with the Constitution and ratified international agreements, whereas all other regulations shall be in conformity with the Constitution and the laws.²

As noted, the Constitution formally recognises both international treaties and generally accepted rules of international law. The latter, according to some interpretations, include customary international law and general principles of law. Due to the fact that there is no reliable source for determining the scope of the concept of generally accepted rules of international law, since that concept is not widely used in the international community, the practical applicability of the provision of the Constitution mandating the effect of generally accepted rules of international law is severely limited. Further evidence for the limited applicability of the subject constitutional provision may be found in a number of other constitutional provisions, which cite only international treaties as the source belonging to the realm of international law:

¹ Constitution of the Republic of Montenegro, Official Gazette of the Republic of Montenegro No. 1/2007, Part I, Article 9.

² Ibid, Part V, Article 145.

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Grounds and equality (Part II, Article 17)

Rights and liberties shall be exercised by virtue of the Constitution and the *ratified international treaties*.

All persons shall be deemed equal before the law, regardless of any particularity or personal feature.

Ombudsman (Part II, Article 81)

The Ombudsman of the Republic of Montenegro is an independent and autonomous authority that implements measures for the protection of human rights and liberties.

The Ombudsman exercises its duties on the basis of the Constitution, the laws and the *ratified international agreements*, observing also the principles of justice and fairness.

Principles of the judiciary (Part III, Article 118)

The courts are autonomous and independent.

A court adjudicates on the basis of the Constitution, laws and *ratified and proclaimed international agreements*.

Establishment of extraordinary courts is prohibited.

Competence of the Constitutional Court (Part VI, Article 149)

The Constitutional Court decides:

1) whether laws are in compliance with the Constitution and with *ratified and proclaimed international treaties*. . . (emphasis added).

In effect, the Constitution renders international law applicable in the Republic of Montenegro either in the form of ratified and published international agreements, or if it is deemed to fall within ‘generally accepted rules of international law’. Whenever international law applies, it has primacy over national legislation. However, from the enumerated operative provisions of the Constitution it is obvious that the practical significance of both the reference to the generally accepted rules of international law, as well as to the direct effect of international law, is minimal, since the Constitution is centred on the model whereby international law in the form of treaties becomes part of the national law via ratification by the national legislature in the form of a law.

1.1 Self-Executing Effect

The Constitution affords international law, i.e. both ratified and published international treaties and generally accepted rules of international law, a self-executing effect whenever they regulate a matter differently from the national legislation. However, in practice such a broad grant of self-executing effect has been relied upon by the courts primarily in the field of human rights and fundamental freedoms.

1.2 Effect Afforded to Secondary Acts Under International Treaty Law

Like international treaties, secondary acts adopted under international treaties may become a part of the national legal system once they are ratified and proclaimed by the Parliament of the Republic of Montenegro.

However, certain decisions taken by the Stabilisation and Association Council (SA Council)³ are binding for the Parties when made within the scope of the Framework of the Stabilisation and Association Agreement.⁴ The Parties are obliged to take measures necessary to implement a decision—which means that the binding effect of a decision does not equal direct applicability. The SA Council is authorised to supervise the implementation and enforcement of the Stabilisation and Association Agreement (SAA), as well as to review issues under the SAA or any other bilateral/international issues of mutual interest. In order to achieve the objectives of the SAA, the SA Council is thus authorised to make decisions within the scope of the SAA, as specified therein.

1.3 Harmonisation with EU Law

By pronouncing international agreements as an integral part of the national legal system, the Constitution not only affords international agreements legal effect, but it also makes it necessary to harmonise national legislation with international law, i.e. the necessity to enact laws and regulations to elaborate and/or implement provisions of ratified international treaties. Due to the peculiar nomotechnics of European Union law, by far the greatest need is for harmonisation with EU acts.

Activities related to the harmonisation of national legislation, including pertinent respective compliance analysis, are performed by the Directorate for Legal Harmonisation operating within the Ministry of Foreign Affairs and European Integration.

The provisions of the Montenegro Stabilisation and Association Agreement⁵ mirroring the EU Founding Treaties in the Montenegrin legal system have a status

³The SA Council consists of the EU Council members together with the members of the European Commission, on one hand, and members of the Government of Republic of Montenegro, on the other hand.

⁴The Stabilisation and Association Agreement between the Republic of Montenegro and the European Union was signed on 15 October 2007. The Agreement entered into force on 1 May 2010, after being ratified by the 27 EU Member States at that time.

⁵The Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Montenegro, of the other part, signed on 15 October 2007, entered into force on 1 May 2010. <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7281>. Accessed 10 October 2014.

identical to all other ratified and proclaimed international treaties. Examples of the judicial application of such provisions either do not exist or are very rare.

Harmonisation of national legislation is assessed continuously and the results of the assessment are publicly available via reports issued within the European integration process. Both the reports on the realisation of the EU Accession Action Plan and of the SAA, as well as analytical reports on screening results, are available on the official website of the Ministry of Foreign Affairs and European Integration.⁶

2 The Court System and Grounds for the Application of International Law

According to the Constitution, all courts are obliged to adjudicate on the basis of the Constitution ratified and proclaimed international treaties and domestic laws. The legal system of the Republic of Montenegro adheres to the continental (civil law) tradition, so that lower courts are not formally obliged to rule in line with previous *rationes decidendi* of the higher courts. In other words, precedents are not a source of law and the *stare decisis* doctrine is not abided by. However, there are two significant deviations from this express rule. The first is grounded in a statutory mechanism, and the second is caused by pragmatic considerations. Firstly, the Law on Courts⁷ authorises the Supreme Court to adopt, in plenary session, and publish ‘general legal holdings’ and ‘general legal opinions’ on issues which may affect the consistent interpretation of the Constitution and of national statutes. Moreover, a plenary session of any other court is empowered to adopt ‘legal holdings’ and to issue ‘legal opinions’ on matters of interpretation of law in the field of competence of that court.⁸ Secondly, the case law of higher courts has a significant impact on the decision making of lower courts in practical terms due to the vertical hierarchy of the judicial system. The probability that a decision of a lower court is upheld is far greater if that decision is consistent with the previous relevant holdings of a higher court. The percentage of judgments that have been upheld by a higher court is the single most important factor determining advancement in the career of every judge, so it is understandable that judges are motivated to adhere to the case law of the higher courts.⁹

The case law of the Constitutional Court has the potential to promote awareness of international law in the law-practising community of Montenegro, since that

⁶ Ministry of Foreign Affairs and European Integration. <http://www.mvpei.gov.me/rubrike/Evropske-integracije/>. Accessed 10 October 2014.

⁷ Law on Courts [*Zakon o sudovima*], Official Gazette of the Republic of Montenegro, Nos. 5/2002, 49/2004, 22/2008, 39/2011, 46/2013.

⁸ Law on Courts, Articles 27, 28, 96-28.

⁹ Law on the Judicial Council [*Zakon o sudskom savjetu*] Official Gazette of the Republic of Montenegro, Nos. 13/2008, 39/2011, 31/2012, 46/2013, 51/2013, Articles 32a and 34a.

Court regularly refers to international law, primarily to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and to other treaties promulgated within the Council of Europe, as well as to the case law of the European Court of Human Rights.¹⁰ Entire decisions of that court, including both holdings and rationale, enacted during a calendar year are published on that court's website in the form of a single file.¹¹

The Supreme Court refers regularly to international treaties as well, primarily to the ECHR¹² and to other treaties in the field of human rights and fundamental freedoms, and increasingly to the conventions enacted under the auspices of the International Labour Organization.¹³

The Supreme Court is vested with specific competence that entails a statutory duty to apply specific standards from the case law of the European Court of Human Rights. The Law on the Protection of the Right to Trial within a Reasonable Time¹⁴ introduced two specific procedural instruments for the protection of the subject right. The second instrument introduced by that statute, which may be applied only when the first one has been exhausted, is a lawsuit for just satisfaction. The only court competent to adjudicate upon such lawsuits is the Supreme Court. In doing so, the Supreme Court needs to assess the alleged violation of the right to trial within a reasonable time, as well as the duration of the reasonable time in each particular case, by relying on the case law of the European Court of Human Rights.¹⁵ Decisions of the Supreme Court are available online through the centralised database of the Montenegrin courts' case law.¹⁶

¹⁰ Decision of the Constitutional Court, No. UŽ-III 233/10 of 27 November 2012; Decision of the Constitutional Court, No. UŽ-III 348/11 of 20 June 2011; Decision of the Constitutional Court, No. UŽ-II 12/09 of 30 September 2010; Decision of the Constitutional Court, No. U-I 17/10 of 22 September 2011.

¹¹ Constitutional Court of the Republic of Montenegro. <http://www.ustavnisudcg.co.me/slike/ustavnisud/praksa.htm>. Accessed 10 October 2014. It should be noted that as of 10 October 2014 the website contains only decisions enacted until the end of 2012, and that no decisions from either 2013 or 2014 are available.

¹² The European Court of Human Rights considers the ECHR to be in force in respect of, and binding upon, Montenegro continuously since 3 March 2004. *Bijelić v. Montenegro and Serbia*. App. no. 11890/05 (ECHR-II 28 April 2009).

¹³ Decision of the Supreme Court of Montenegro, Rev. No. 490/11 of May 10, 2011; Decision of the Supreme Court of Montenegro, Rev. No. 490/11 of 10 May 2011; Decision of the Supreme Court of Montenegro, Tpz 38/13 of 20 December 2013; Decision of the Supreme Court of Montenegro, Tpz 8/2014, of 26 March 2014; Decision of the Supreme Court of Montenegro, Rev. No. 139/14, of 2 April 2014.

¹⁴ Law on the Protection of the Right to a Trial within a Reasonable Time [*Zakon o zaštiti prava na suđenje u razumnom roku*] Official Gazette of the Republic of Montenegro, No. 11/2007.

¹⁵ *Ibid*, Article 2.

¹⁶ The database contains all the decisions of all the courts in Montenegro, except the Constitutional Court, starting from approximately 2010 or 2011. <http://sudovi.me>. In addition to the database, the decisions of the Supreme Court have been made available in an annual bulletin, in the form of a single file containing all the decisions from that year. Both the online database and the bulletin contain entire decisions, including both the holding and the rationale of each decision. The

Based on the case law of the past several years, which has been made publicly available, it can be concluded that the courts are acting as a progressive rather than a conservative force. Such a conclusion arises from the fact that the highest courts do not seem reluctant to refer to the international treaties and to the case law of international courts interpreting such treaties. This tendency is particularly pronounced in respect of the ECHR and the case law of the European Court of Human Rights.

The Government of Montenegro adopted in June 2013 action plans for reforms in areas covered by the *acquis* in Chapter 23—Judiciary and Fundamental Rights,¹⁷ and Chapter 24—Justice, Freedom and Security.¹⁸ Negotiations on these chapters commenced in December 2013.

2.1 The Court System

Courts in the Republic of Montenegro are organised on the basis of the Law on Courts, which stipulates that judicial power is exercised by the courts of general and special jurisdiction, whereas the courts of general jurisdiction are the basic courts, the higher courts, the court of appeal and the Supreme Court of the Republic of Montenegro—the highest court in the country. The courts of special jurisdiction are commercial and administrative courts.

Montenegro has 15 basic courts, two higher courts, one appellate and one Supreme Court. According to the European Commission's Progress Report for 2013, the random allocation of cases is ensured in general, with the exception of small courts where this is not possible for practical reasons.¹⁹

First-instance jurisdiction mostly lies with basic courts as they try all cases except criminal acts for which the punishment may be imprisonment for more than 10 years, which, together with a number of crimes enumerated in the Law on Courts, are conferred upon higher courts. Higher courts also decide on appeals against judgments of basic courts. Disputes between companies are tried by specialised commercial courts. The Court of Appeals only decides upon appeals

published texts do not contain the names of the parties and of other persons and entities, but only their initials. As of October 2014, only the bulletin edition for 2011 has been published. <http://sudovi.me/podaci/vrhs/dokumenta/574.pdf>. Accessed 10 October 2014.

¹⁷ Action Plan for Chapter 23—Judiciary and Fundamental Rights, the Government of Montenegro, 27 June 2013. <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=138835&rType=2>. Accessed 10 October 2014.

¹⁸ Action Plan for Chapter 24—Justice, Freedom and Security, the Government of Montenegro, 27 June 2013. <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=138836&rType=2>. Accessed 10 October 2014.

¹⁹ Commission Staff Working Document, Montenegro 2013 Progress Report, Brussels, 16 October 2013, SWD (2013) 411 final, p. 36. http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf. Accessed 10 October 2014.

against judgments of higher courts, as well as against judgments of commercial courts.

The Administrative Court adjudicates on administrative disputes, i.e. disputes over the legality of administrative decisions, while the Supreme Court decides on extraordinary legal remedies filed against judgments of all other courts. In its plenary session, the Supreme Court, as has already been explained, also adopts general legal holdings and issues general legal opinions, with the aim of harmonising the case law.

2.2 Ensuring Harmonised Interpretation of Law

Harmonising case law is an obligation imposed, by virtue of the Constitution, upon the Supreme Court.²⁰

As has already been pointed out, the Law on Courts contains mechanisms dedicated to securing unified interpretation of law by the judiciary, both vertically and horizontally. Vertical harmonisation is achieved by virtue of the power given to the plenary session of the Supreme Court to adopt general legal holdings and to publish general legal opinions with the aim of harmonising the practice of all the other courts. The power of each court's plenary session to adopt legal holdings and to issue legal opinions for matters falling within the competence of that court serves harmonisation at the horizontal level. The technique which the legislator applied in respect of these mechanisms is peculiar and should be noted: nowhere in the law is it expressly stipulated that adherence to the general legal holdings and opinions of the Supreme Court, and to the legal holdings and opinions of other courts respectively, is obligatory for any particular judge. The law merely posits the aim of these mechanisms: achieving a unified interpretation of law.²¹ It is left to the judges to draw the obvious conclusion that if these mechanisms are to serve their purpose, they need to be followed in comparable and materially similar situations. In this way, the law does not expressly bestow the status of source of law upon court precedents, but at the same time it takes significant steps in that direction.

In addition to the described statutory mechanisms, a major factor of harmonisation of case law within the system of courts is the pragmatic reasons of pursuit of career advancement by the judges. The lower the number of cases adjudicated by a judge that are remanded by a higher court, the greater are the chances that the judge will advance in his or her career.²² For the purpose of assessing the strength of this factor, one should consider that the European Commission's Montenegro Progress Report for 2014 contains the following assessment:

²⁰ Article 124 of the Constitution of the Republic of Montenegro confers the following duty upon the Supreme Court: 'The Supreme Court shall secure unified enforcement of laws by the courts'.

²¹ Law on Courts, Articles 27, 28, 96-28.

²² Law on Judicial Council, Articles 32a and 34a.

The systems of recruitment and career development of judges and prosecutors still leave room for undue influence affecting the independence of the judiciary. Work on the legislative basis for introducing a single, countrywide recruitment system for judges and prosecutors, a system of voluntary horizontal mobility and a new system of promotion of judges and prosecutors and of periodic professional assessment of their performance is at an advanced stage.²³

Decisions of the Constitutional Court influence the case law of all other courts both directly and indirectly. The direct impact is realised through the mechanism of ‘constitutional complaint’, which may be filed with that court against a decision of any public authority, including courts, infringing upon the rights and liberties guaranteed by the Constitution. The constitutional complaint may be filed only upon the exhaustion of all other legal remedies.²⁴ The case law of the Constitutional Court indirectly affects the practice of all other courts by virtue of the power of that court to review the constitutionality of laws and regulations.²⁵

2.3 Grounds for Review of Compliance with International Law

The Constitution bestows upon the Constitutional Court the power to review the constitutionality of laws and regulations (bylaws) and to strike down all laws that it finds in contravention of the Constitution or of ratified and proclaimed international treaties. In line with the hierarchy of sources of law adopted by the Constitution, which assumes that international law is absorbed by the national legal system in the form of laws on ratification of international treaties, grounds for the review of bylaws and regulations below the level of laws do not encompass international law, but only national laws and the Constitution.²⁶

2.4 Preliminary References of Constitutionality

National courts of Montenegro may not exercise a reference for a preliminary ruling of the Court of Justice of the European Union because Montenegro has not yet become a member of the EU.

A national court may resort to the mechanism of ‘international legal assistance’ and seek interpretation of a treaty or of another provision of international or

²³ Commission Staff Working Document, Montenegro 2014 Progress Report, Brussels, 8 October 2014, SWD (2014) 301 final, pp. 35, 36. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf. Accessed 10 October 2014.

²⁴ Constitution of the Republic of Montenegro, Article 149(1).

²⁵ Ibid.

²⁶ Ibid.

national law in accordance with the procedure laid down in the appropriate international treaty (the ECHR, or usually a bilateral treaty on international legal cooperation). However, the interpretation obtained on such grounds would not be binding either upon the court that requested it, or upon other courts in Montenegro.

It should be noted that the Law on the Constitutional Court stipulates that if an issue of compatibility of law with the Constitution or with a ratified international treaty is raised before a court in the course of court proceedings, the court should suspend the proceedings and initiate a procedure for the review of constitutionality of the disputed act before the Constitutional Court.²⁷ There is no available data on whether and to what extent the courts abide by this obligation.

2.5 General Grounds for the Application of International Law

The Constitution proclaims supremacy of international law, consisting of both ratified treaties and generally accepted rules of international law, over national law, as well as its direct effect on all matters regulated differently by national laws.²⁸ However, in the operative provision of the Constitution in which the grounds on which courts adjudicate are set forth, only ratified and proclaimed international treaties are enumerated, subsequently to the national laws. This means that the operative provision on the grounds for adjudication not only disregards the constitutional declaration of applicability of generally accepted rules of international law, but that the same provision disregards the constitutional declaration of the supremacy of international law over national laws.²⁹

The declaration of the supremacy of international law over national laws, including direct effect on matters regulated differently by national laws, presupposes an instruction for the courts to interpret national legislation in line with international law. However, it should be noted that an explicit order to that effect is absent from both the Constitution and the Law on Courts.

2.6 Specific Grounds for the Application of International Law

Specific grounds for the application of international law that are presently in force within the legal system of Montenegro may be grouped in two categories.

²⁷ Law on the Constitutional Court [*Zakon o Ustavnom sudu*] Official Gazette of the Republic of Montenegro, No. 64/2008.

²⁸ Constitution of the Republic of Montenegro, Article 9.

²⁹ Constitution of the Republic of Montenegro, Article 118(2).

Firstly, a specific statutory reference to the case law of the European Court of Human Rights was enacted in 2007 in the form of the Law on the Protection of the Right to Trial within a Reasonable Time.³⁰ This law provided participants in civil, criminal and administrative court proceedings affecting the protection of fundamental rights within the scope of the ECHR with two specific procedural instruments (a request for the acceleration of proceedings and a lawsuit for just satisfaction) to safeguard their right to trial within a reasonable time. The law stipulates that both the existence of an alleged violation of the subject right, as well as the duration of reasonable time in each particular case, would be determined by Montenegrin courts in accordance with the case law of the European Court of Human Rights.³¹ The European Commission's Montenegro Progress Report for 2011 was the last occurrence of the negative assessment that the Law on the Protection of the Right to Trial within a Reasonable Time had not been implemented effectively. Subsequent reports, for 2012, 2013 and 2014, did not encompass that assessment.³² Between 10 September 2014 and 10 October 2014, during a period randomly chosen for sampling purposes, the Supreme Court adopted just over 320 decisions in total. Among these, only one was taken upon a lawsuit for just satisfaction filed pursuant to the Law on the Protection of the Right to Trial within a Reasonable Time. From the beginning of 2014 until 10 October 2014, the Supreme Court adopted a total of 32 decisions upon lawsuits for just satisfaction.³³

Secondly, statutes on civil and criminal procedure provide specific grounds for retrial if the European Court of Human Rights has determined violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, or, in the case of the statute on criminal procedure, if some other international court whose competence is recognised by Montenegro finds a comparable violation.

The Law on Civil Procedure stipulates that the request for retrial may be filed, within 3 months from the final judgment of the European Court of Human Rights

³⁰ Law on the Protection of the Right to a Trial within a Reasonable Time [*Zakon o zaštiti prava na suđenje u razumnom roku*], Official Gazette of the Republic of Montenegro, No. 11/2007.

³¹ *Ibid.*, Article 2.

³² Commission Staff Working Paper, Montenegro 2011 Progress Report, Brussels, 12 October 2011, SEC (2011) 1204 final, p. 57. http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mn_rapport_2011_en.pdf. Accessed 10 October 2014; Commission Staff Working Document, Montenegro 2012 Progress Report, Brussels, 10 October 2012, SWD (2012) 331 final, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf. Accessed 10 October 2014; Commission Staff Working Document, Montenegro 2013 Progress Report, Brussels, 16 October 2013, SWD (2013) 411 final. http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf. Accessed 10 October 2014; Commission Staff Working Document, Montenegro 2014 Progress Report, Brussels, 8 October 2014, SWD (2014) 301 final. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-mon-tenegro-progress-report_en.pdf. Accessed 10 October 2014.

³³ Courts of Montenegro, the Supreme Court, database of decisions. <http://sudovi.me/vrhrs/odluke/>. Accessed 10 October 2014.

finding infringement of a human right or a fundamental freedom, in contravention of the ECHR. The request should be filed with the Montenegrin court that enacted the decision that has been found to represent an infringement of a human right or fundamental freedom. The request is allowed only if the infringement established by the European Court of Human Rights may not be redressed in any other manner. The court acting pursuant to such a request is bound by the holding of the judgment of the European Court of Human Rights.³⁴

The equivalent provision of the Code of Criminal Procedure³⁵ is of broader scope than the provision of the Law on Civil Procedure. The difference is twofold: firstly, the grounds for retrial may also be a decision of any other international court established by virtue of a treaty that has been ratified by Montenegro. Secondly, it is not necessary for the retrial to be the only remaining means by which the violation of the human right or a fundamental freedom may be redressed. It suffices that redress is possible by way of retrial. Taking into consideration that until Montenegro accedes to the European Union and thus falls under the jurisdiction of the Court of Justice of the European Union that the only international courts other than the Court of Human Rights are those that deal with criminal matters, it is evident that the identified differences are purely of theoretic significance.

It should be noted that the Law on Administrative Disputes³⁶ lacks a provision with an effect equivalent to the provisions of the Law on Civil Procedures and of the Code on Criminal Procedure described in previous paragraphs.

An objection may be put forth in respect of the respective provisions of both the Law on Civil Procedure and the Code of Criminal Procedure: they refer only to decisions of international courts, and thus fail to include the possibility that the findings of other bodies established under international treaties to which Montenegro is a party, e.g. decisions upon individual complaints issued by the committees tasked with monitoring implementation of human rights treaties adopted under the auspices of the United Nations,³⁷ serve as grounds for retrial. The significance of this objection in the case of Montenegro in practical terms is minimal, since the applicable rules of admissibility of individual complaints for all these committees deny admissibility to the complaints that have been submitted to other regional mechanisms or international bodies. Taking into account the membership of Montenegro in the Council of Europe, it would be highly unlikely for a Montenegrin entity to opt for filing a complaint with one of the UN committees instead of seeking redress from the European Court of Human Rights.

³⁴ Law on Civil Procedure [*Zakon o parničnom postupku*], Official Gazette of the Republic of Montenegro, Nos. 22/2004 and 76/2006, Article 428a.

³⁵ Code of Criminal Procedure [*Zakonik o krivičnom postupku*], Official Gazette of the Republic of Montenegro, Nos. 57/2009 and 49/2010, Article 424(1.6).

³⁶ Law on Administrative Disputes [*Zakon o sudskim sporovima*] Official Gazette of the Republic of Montenegro, Nos. 60/2005, 32/2011.

³⁷ E.g. Human Rights Committee, Committee on Elimination of Discrimination against Women, Committee against Torture, Committee on the Elimination of Racial Discrimination, etc.

3 Application of International Law in Practice

National courts apply international law mostly in the fields of human rights and fundamental freedoms. The source of international law that is predominantly applied by the judiciary is multilateral treaties, mostly those enacted under the auspices of the Council of Europe. The case law of international courts is not applied by the courts, with a major exception being the case law of the Court of Human Rights, which is relied upon for purposes of interpreting the Convention for the Protection of Human Rights and Fundamental Freedoms. Montenegrin courts, primarily the highest courts—the Constitutional Court and the Supreme Court—invoke the case law of the European Court of Human Rights not only *sua sponte* but also *ex officio*, i.e. upon their own initiative. However, in the 2012 Montenegro Progress Report, the EU Commission included the following assessment: ‘Shortcomings persist in the protection of human rights by judicial and law enforcement authorities, some of them in relation to alignment with European standards and European Court of Human Rights case law’.³⁸

References to the case law of other national courts, e.g. the German Federal Constitutional Court, cannot be found in practice.

Customary international law may be deemed a source of international law that is in force in Montenegro on the grounds of a declaratory provision of the Constitution, which proclaims that ‘generally accepted rules of international law’ are a source of law immediately below the Constitution, although constitutional provisions which would make effect of such law in the legal system are lacking. This deficiency naturally causes the courts to refrain from relying directly on customary international law, even as a tool of interpretation.

International law finds its way into the case law of Montenegrin courts also by virtue of the activity of the Supreme Court. A significant example of such activity is the issuance of guidelines for determining the level of pecuniary compensation in defamation cases commenced against the media in line with the case law of the European Court of Human Rights.³⁹

³⁸ Commission Staff Working Document (2012) Montenegro 2012 Progress Report, Brussels SWD (2012) 331 final, pp. 12–13. http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf. Accessed 10 October 2014.

³⁹ Commission Staff Working Paper (2011) Montenegro 2011 Progress Report, Brussels, 12 October 2011, SEC (2011) 1204 final, p. 16. http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mn_rapport_2011_en.pdf. Accessed 10 October 2014.

3.1 *The Constitutional Court's Review of National Legislation*

As regards the application of international treaties for the purpose of *in abstracto* constitutional review, the case law of the Constitutional Court shows that in a significant number of decisions the Constitutional Court relies on an international treaty, particularly on the ECHR. Out of a total of 17 decisions it enacted in 2011 in respect of constitutionality and/or compliance with international law of statutes, the Constitutional Court assessed compliance with multilateral treaties in seven cases, and in all these cases one of the conventions of the Council of Europe served as grounds of review. Out of these seven cases, in four the review was based on the Convention for the Protection of Human Rights and Fundamental Freedoms.

An example of such practice is the Decision of the Constitutional Court No. U-I 17/10 of 22 September 2011, whereby the Court established that Article 112(4) of the Civil Servants Act allowed arbitrary conduct by administrative agencies when deciding on the rights of employed civil servants, and that this was therefore unacceptable in a democratic society and in contravention of the ECHR. The rationale of this decision included the following assessment:

...exclusion of the right to appeal (initiate court proceeding) against the decision of administrative authority is contrary to the right to an effective remedy prescribed by Article 13 of the ECHR.⁴⁰

Another example of *in abstracto* constitutional review is the Decision of the Constitutional Court U-I No. 12/11 of 24 March 2011.⁴¹ The Court adjudicated on the compliance of the Law on the Census of Population, Households and Dwellings for 2011⁴² with the ECHR and with the Framework Convention for the Protection of National Minorities, finding the law compliant with both treaties.

By virtue of another decision,⁴³ the Court rejected a lawsuit submitted by eight Members of Parliament which challenged Article 11(1) of the General Law on Education.⁴⁴ The challenged provision categorised the Serbian language as a minority language in Montenegro. The Court found the provision to be compliant both with the Constitution and with the provisions of the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of

⁴⁰ Decision of the Constitutional Court U-I No. 17/10 of 22 September 2011, Bulletin of the Constitutional Court for 2011. <http://www.ustavnisudcg.co.me/slike/ustavnisud/Bilten%202011.htm>. Accessed 10 October 2014.

⁴¹ Ibid.

⁴² Law on the Census of Population, Households and Dwellings for 2011, Official Gazette of the Republic of Montenegro, Nos. 41/10, 44/10 and 75/10.

⁴³ Decision of the Constitutional Court U-I Nos. 27/10, 30/10, and 34/10 of 24 March 2011, Bulletin of the Constitutional Court for 2011. <http://www.ustavnisudcg.co.me/slike/ustavnisud/Bilten%202011.htm>. Accessed 10 October 2014.

⁴⁴ General Law on Education, Official Gazette of the Republic of Montenegro, Nos. 64/02, 31/05, 49/07 and 45/10.

National Minorities, as well as with the Recommendations Regarding the Education Rights of National Minorities issued by the OSCE High Commissioner on National Minorities, The Hague, in 1996.

3.2 Practice of the Constitutional Court in Individual Cases

The Constitutional Court is competent to adjudicate in respect of individual cases upon individual constitutional complaints.⁴⁵

An analysis of the case law of the Constitutional Court shows that it is common for the Constitutional Court to apply not only international treaty law but also the case law of international courts, primarily the case law of the European Court of Human Rights, primarily for the purpose of interpreting the ECHR.

In the last 2 years for which data are available—2011 and 2012—among the cases commenced by virtue of constitutional complaints against acts of state authorities with individual effect, less than 10 % did not include an assessment of compliance with a multilateral international treaty, primarily with the European Convention for Human Rights and Fundamental Freedoms.

Some of the decisions that may serve as an example of the court's practice in individual cases are the following:

- in Decision UŽ-III No. 348/11 of 20 June 2011, the court called upon Article 5 (unlawful deprivation of liberty) of the ECHR, a position statement of the European Court of Human Rights on the respective Article, as well as upon the relevant case law of the European Court of Human Rights in respect of the application of the Article;
- the Constitutional Court called upon Article 5 ECHR in several decisions enacted in the course of 2011: Decision UŽ-III No. 74/09 (infringement of Article 5(4) ECHR, Decision UŽ-III No. 533/10 (infringement of Article 5 (3) ECHR), Decision UŽ-III No. 464/11 (infringement of Article 5(1–3) and Article 6(2) ECHR);
- by virtue of its Decision UŽ-III No. 12/09 of 30 September 2010, the Constitutional Court found that the Supreme Court had violated the complainant's right to access the court and to an effective remedy by insisting on an excessively formal interpretation of the procedural requirements for seeking redress from the Supreme Court as the highest judicial instance;

⁴⁵ The Constitutional Court is established by virtue of the Constitution. The most important function of this court is general normative review, i.e. assessment of the conformity of legislative acts of general applicability (laws and government regulations) with the Constitution and ratified treaties. Protection of human rights, which is also within that court's competence, is no less important. All decisions of the Constitutional Court are executable, and there are no legal means for challenging them.

- in 2011 the Constitutional Court ruled favourably on several constitutional complaints which claimed violation of the rights under Article 6 ECHR (right to a fair trial). These were decisions UŽ-III No. 28/09, UŽ-III No. 112/09, UŽ-III No. 128/09, UŽ-III No. 99/10, UŽ-III No. 135/10, UŽ-III No. 155/10, UŽ-III No. 205/10, UŽ-III No. 380/10, UŽ-III No. 439/10, UŽ-III No. 462/10 and UŽ-III No. 291/11.⁴⁶

The Constitutional Court has in recent years been relying extensively on the case law of the European Court of Human Rights for the purpose of interpreting the ECHR. As examples of such references, the following decisions may serve:

- Decision UŽ-III No. 348/11 of 20 June 2011⁴⁷—the court relied on a number of holdings of the European Court of Human Rights for the purpose of justifying its findings in respect of alleged violation of Article 5(1 and 3) ECHR (*W. v. Switzerland*,⁴⁸ *Kemmache v. France*,⁴⁹ *Nikolova v. Bulgaria*,⁵⁰ *Trzaska v. Poland*,⁵¹ *Yagci & Sargin v. Turkey*,⁵² *Neumeister v. Austria*,⁵³ *Jablonski v. Poland*,⁵⁴ as well as in respect of alleged violations of the right to a fair trial and of the presumption of innocence, i.e. of Article 6(1 and 2) ECHR (*Barbera, Messegue, Jabardo v. Spain*,⁵⁵ *Matijašević v. Serbia*⁵⁶);
- Decision UŽ-III No. 12/09 of 30 September 2010⁵⁷—the court cited certain decisions of the European Court of Human Rights as sources of rules on the legality of limitations of access to the court (*Golder v. UK*,⁵⁸ *Philis v. Greece*⁵⁹),

⁴⁶ Bulletin of the Constitutional Court for 2011. <http://www.ustavnisudcg.co.me/slike/ustavnisud/Bilten%202011.htm>. Accessed 10 October 2014.

⁴⁷ *Ibid.*

⁴⁸ *W. v. Switzerland*, App. no. 14379/88 (ECHR 1993).

⁴⁹ *Kemmache v. France* (No. 3) App. no. 17621/91 (ECHR 1994).

⁵⁰ *Nikolova v. Bulgaria* [GC] App. no. 31195/96 (ECHR 1999).

⁵¹ *Trzaska v. Poland*, App. no. 25792/94 (ECHR 2000).

⁵² *Yagci & Sargin v. Turkey*, App. nos. 16419/90 and 16426/90, Commission decision of 10 July 1991, Decisions and Reports 71, p. 253. It should be noted that the Constitutional Court wrongly cited the date of issuance and publication details of this decision.

⁵³ *Neumeister v. Austria*, App. no. 1936/63, 27 June 1968, Series A no. 8. The Constitutional Court wrongly referred to a judgment issued by the European Court of Human Rights in a dispute between the same parties 6 years later, the subject of which had been the alleged violation of the applicant's rights under Art. 50 ECHR (*Neumeister v. Austria*, App. no. 1936/63, 7 May 1974, Series A no. 17).

⁵⁴ *Jablonski v. Poland* (just satisfaction), App. no. 33492/96 (ECHR 2000).

⁵⁵ *Barbera, Messegue, Jabardo v. Spain*, App. nos. 10588/83, 10590/83, 10589/83, Commission decision of 11 October 1985, Decisions and Reports 44, p. 149. The Constitutional Court wrongly stated the date of issuance and publication details of this decision.

⁵⁶ *Matijašević v. Serbia* (just satisfaction) App. no. 23037/04 (ECHR 2006-X).

⁵⁷ Bulletin of the Constitutional Court for 2011 <http://www.ustavnisudcg.co.me/slike/ustavnisud/bilten2010.htm>. Accessed 10 October 2014.

⁵⁸ *Golder v. United Kingdom* (just satisfaction), App. no. 4451/70, 21 February 1975, Series A no. 18.

⁵⁹ *Philis v. Greece* (just satisfaction), App. nos. 12750/87, 13780/88, 14003/88, 27 August 1991, Series A no. 209.

as well as of the rule stipulating that a party may not suffer adverse consequences of a court's failure to instruct it on the proper amount of the court filing fee (*Garžičić v. Montenegro*⁶⁰).

3.3 Practice of the Supreme Court

The Supreme Court, as well, in its jurisdiction applies international law, mainly the law contained in human rights treaties.

The following decisions may serve as examples of the Supreme Court's application of treaty law:

- Decision Rev. No. 490/11 of 10 May 2011,⁶¹ whereby the Supreme Court applied the UN Convention on the Rights of the Child (Article 9(3)) to issues related to a child's right to maintain personal relations and contact with both parents on a regular basis;
- by virtue of Decision Rev. No. 139/14 of 2 April 2014,⁶² the Supreme Court denied the extraordinary remedy of revision against a judgment of a lower court; the request for revision alleged violation of several multilateral treaties to which Montenegro was a party on the grounds of deprivation of the right to appeal in employment-related disciplinary proceedings; the court summarily dismissed allegations that several treaty provisions had been violated: Article 2(3) of the International Pact on Civil and Political Rights, Article 7 of ILO Convention No. 158, as well as Article 24 of the Revised European Social Charter.

On both of these occasions the Supreme Court simply stated its assessment of whether or not a given treaty had been violated, without undertaking to justify such an assessment and without citing any interpretative authority.

It should be noted that the Supreme Court has shown particular deference to a judgment of the European Court of Human Rights whereby infringement of human rights and fundamental freedoms was found to have been committed by the Supreme Court itself.⁶³ After that judgment of the European Court of Human Rights was passed in September 2010, the Supreme Court has cited it on two occasions in which it needed to interpret the guarantee of access to the court.⁶⁴

⁶⁰ *Garžičić v. Montenegro*, App. no. 17931/07 (ECHR 2010).

⁶¹ Bulletin of the Supreme Court for 2011. <http://sudovi.me/podaci/vrhs/dokumenta/574.pdf>. Accessed 10 October 2014.

⁶² Courts of Montenegro, the Supreme Court, database of decisions. <http://sudovi.me/vrhs/odluke/>. Accessed 10 October 2014.

⁶³ *Garžičić v. Montenegro* (n 60).

⁶⁴ Decision Rev. 422/14 of 3 June 2014; Decision Rev. 336/12 of 13 December 2012, the Courts of Montenegro, the Supreme Court, database of decisions. <http://sudovi.me/vrhs/odluke/>. Accessed 10 October 2014.

As has already been noted, the Supreme Court has a duty to rely on the case law of the European Court of Human Rights when it adjudicates upon lawsuits for just satisfaction submitted pursuant to the Law on the Protection of the Right to Trial within a Reasonable Time.⁶⁵ A comparison of randomly chosen decisions from 2011 and from 2014 shows marked progress in the court's reasoning. In Decision Tpz. No. 1/11 of 28 March 2011,⁶⁶ the court did not refer to the case law of the European Court of Human Rights at all, but established an infringement of the right to trial within a reasonable time solely on the basis of the applicable national statute. In contrast, two out of three randomly chosen decisions from 2013 to 2014 clearly show an evolution in the court's reasoning—express references to the case law of the European Court of Human Rights are made *sua sponte* for the purpose of justifying assessments made in the respective decisions:

- Decision Tpz. No. 38/13 of 20 December 2013⁶⁷—the Supreme Court cited *Rezgui v. France*⁶⁸ and *Kostovski v. Macedonia*⁶⁹ as authorities for its interpretation that the time period of proceedings subject to review may not encompass the time spent by the applicant on attempting to pursue a remedy that the court finds inappropriate;
- Decision Tpz. No. 39/13 of 20 December 2013⁷⁰—the Supreme Court limited its analysis to the assessment of whether concrete steps of the subject enforcement procedure were taken in accordance with the applicable procedural statute, and, having found that all steps were taken within statutory terms, dismissed the lawsuit without making a reference to any judgment of the European Court of Human Rights;
- Decision Tpz. No. 8/2014 of 26 March 2014⁷¹—the Supreme Court cited several judgments of the European Court of Human Rights as source of the rule of interpretation on the repeated remanding of a case by a higher court (*Pavlyulynets v. Ukraine*,⁷² *Wierciszewska v. Poland*,⁷³ *Parizov v. FYROM*⁷⁴), as well as of the position that two periods of a court's inactivity, in total

⁶⁵ Law on the Protection of the Right to a Trial within a Reasonable Time [*Zakon o zaštiti prava na suđenje u razumnom roku*], Official Gazette of the Republic of Montenegro, No. 11/2007, Article 2.

⁶⁶ Bulletin of the Supreme Court for 2011. <http://sudovi.me/podaci/vrhs/dokumenta/574.pdf>. Accessed 10 October 2014.

⁶⁷ Courts of Montenegro, the Supreme Court, database of decisions. <http://sudovi.me/vrhs/odluke/>. Accessed 10 October 2014.

⁶⁸ *Rezgui v. France* (dec.) App. no. 49859/99 (ECHR 2000-XI).

⁶⁹ No such decision may be found in the HUDOC database of the European Court of Human Rights case law.

⁷⁰ Courts of Montenegro, the Supreme Court, database of decisions. <http://sudovi.me/vrhs/odluke/>. Accessed 10 October 2014.

⁷¹ *Ibid.*

⁷² *Pavlyulynets v. Ukraine*, App. no. 70767/01 (ECHR 2005).

⁷³ *Wierciszewska v. Poland*, App. no. 41431/98 (ECHR 2003).

⁷⁴ *Parizov v. 'the Former Yugoslav Republic of Macedonia'*, App. no. 14258/03 (ECHR 2008).

20 months long, amount to a violation of the right to trial within a reasonable time (*Napijalo v. Croatia*⁷⁵).

3.4 *Practice of Courts of General Jurisdiction and of Commercial Courts*

It is noticeable that basic, appellate and commercial courts apply international law, but almost exclusively as result of the fact that the lawsuit invoked international law. Since the protection of human rights is mostly provided through the mechanism of a constitutional complaint at the level of the Constitutional Court, partly at the level of the Supreme Court on the grounds of a lawsuit for just satisfaction, the lower courts are often faced with international law regulating fields other than human rights. The following decisions may serve as an example of such practice:

- Decision of the Basic Court in Podgorica P. No. 5341/10 of 10 May 2012⁷⁶—the plaintiff invoked Article 11 of the ILO Convention No. 158 in respect of termination of employment at the initiative of the employer; the court found that the employer had failed to respect the right to a reasonable notice period;
- Decision of the Commercial Court in Podgorica P. No. 252/12 of 15 November 2012⁷⁷—the court *sua sponte* applied the Madrid Agreement Concerning the International Registration of Marks, Article 4 (effects of international registration);
- Decision of the Appellate Court in Podgorica Pž. No. 729/12 of 25 December 2012⁷⁸—the court remanded the case to a lower court on appeal, approving the appellant's claim that the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) had been applicable due to its supremacy over national law.

It is difficult to find examples of a lower court applying international law in the form of holdings of international courts. Even the case law of the European Court of Human Rights as a source of rules for interpreting or even complementing the ECHR is not relied upon. This is understandable in light of the fact that lower courts in most cases do not rely on international law *sua sponte*, but only when they review claims made by the parties. The parties, however, refrain from grounding their

⁷⁵ *Napijalo v. Croatia*, App. no. 66485/01 (ECHR 2003).

⁷⁶ Courts of Montenegro, the Basic Court in Podgorica, database of decisions. <http://sudovi.me/ospg/odluke/>. Accessed 10 October 2014.

⁷⁷ Courts of Montenegro, the Commercial Court in Podgorica, database of decisions. <http://sudovi.me/pspg/odluke/>. Accessed 10 October 2014.

⁷⁸ Courts of Montenegro, the Appellate Court in Podgorica, database of decisions. <http://sudovi.me/ascg/odluke/>. Accessed 10 October 2014.

claims on the case law of international courts due to the fact that case law, as a matter of principle, is not a source of law in the legal system of Montenegro.

4 Availability of Case Law of National Courts

Decisions of all national courts, except of the Constitutional Court, are available free of charge in the online database on the official website of the courts of Montenegro—<http://sudovi.me>. It seems as though the decisions of most courts are made available starting from 2011 to 2012, whereas for the preceding 3–4 years only some of the decisions are included in the database. Entire decisions are available, including both the holdings and the rationale thereof. Names of the parties and other identifiers are reduced to initials. The database allows the categorisation of decisions by court, and further by department, the underlying procedural instrument, or by year of issuance. The database allows a search by term in the text of the decisions, as well as a search by date, court file number, etc.

The same website contains some decisions of the European Court of Human Rights in local languages—entire decisions upon applications against Montenegro, Serbia and Bosnia and Herzegovina are available, two translations of decisions of the European Court of Human Rights in cases that are not related to the region, as well as an entire book with a selection of key decisions of that court in the field of family law—the rights of the child.⁷⁹

The case law of the Constitutional Court is available on the website of that court. It is organised in the form of annual bulletins, but individual sections of those bulletins, structured according to procedural criteria (subject of review, underlying procedural instrument, etc.), are also available on the website.⁸⁰

All laws and bylaws, including Government decrees, in force in Montenegro are available free of charge on the website of the Official Gazette of Montenegro, in a database that is searchable by document title terms.⁸¹ The texts of laws and regulations as amended by subsequent amendments and revisions are accessible at the same website, but only for a fee.

⁷⁹ Courts of Montenegro, the Supreme Court, Selected Decisions of the European Court of Human Rights. <http://sudovi.me/vrhs/evropski-sud-esljp/odabrane-odluke/>. Accessed 10 October 2014.

⁸⁰ As has been noted, the last year for which a bulletin was issued is 2012, so as of 10 October 2014 decisions issued in 2013 and 2014 are not available.

⁸¹ Official Gazette of Montenegro. <http://www.sluzbenilist.me/PAOsnPretraga.aspx>. Accessed 10 October 2014.

5 Legal Education on International and EU Law

A course on International Public Law forms part of the mandatory curriculum of basic law degree studies, and is also taught within certain streams of graduate studies. Other courses that cover the area of international public law are those on International Relations, International Human Rights Law, International Law of Environmental Protection and the Law of European Integration. As for the international conventions and treaties regulating matters in the realm of private law, such as the Vienna Convention on International Trade of Goods, the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the New York Convention on International Commercial Arbitration, etc., these are taught within the course on International Private Law.

The bar exam does not include an assessment of the knowledge of international law.⁸²

The concept of lifelong learning was introduced in the judicial system in 2000 through the establishment of the Judicial Training Centre of the Republic of Montenegro. The main task of this centre has remained to provide training of judges and other target groups in relation to new legislation, international standards, modern methods of performing judicial tasks and court management, foreign languages, computer skills, etc. Training programmes are targeted at judges, judicial assistants and court trainees, as well as at other staff employed in the court administration. The educational programme of the Centre for 2012 primarily focuses on the specialisation and education of judges in certain areas of international and European Council law.⁸³ In its previous work, the Centre has developed cooperation with a number of relevant international organisations in the field of international law, such as the European Agency for Reconstruction, the Organization for Security and Cooperation—OSCE, the Council of Europe, the Open Society Institute, Checchi and Company Consulting, Inc., USAID, UNDP, etc.

In the 2012 Montenegro Progress Report, the EU Commission found that certain efforts had been made to ensure national courts' compliance with the case law of the European Court of Human Rights partly by holding training courses for judges and prosecutors.

⁸² Rules of the Bar Exam of the Republic of Montenegro (2004). Courts of Montenegro. <http://sudovi.me/podaci/osct/dokumenta/391.pdf>. Accessed 10 October 2014.

⁸³ Educational programme of the Judicial Training Center (2012). Judicial Training Centre of Montenegro. www.coscg.org/test/Editor/assets/Godishji%20program%20obuke-2012.doc. Accessed 10 October 2014.

6 Conclusion

The Constitution stipulates that both ratified international treaties and generally accepted rules of international law are an integral part of the national legal system, and that international law is qualified by supremacy over national laws and by direct effect on all matters regulated differently by national laws. However, from other operative provisions of the Constitution (powers of the Ombudsman, grounds for adjudication and for constitutional review, etc.), it is clear that the Constitution essentially deems ratification by national legislature in the form of a statute as the principal ‘point of entry’ of international law in the national legal system. An analysis solely based on a systemic interpretation of the provisions of the Constitution would therefore lead to the conclusion that the proclamation of the supremacy and direct effect of international law, consisting not only of international treaties but also of generally accepted rules of international law, is of a purely declaratory nature.

However, an analysis of the case law of the highest courts of Montenegro shows that a source of law that is not even mentioned in the Constitution is producing considerable effects within the national legal system—the case law of international courts, primarily the case law of the European Court of Human Rights.

The two procedural instruments provided for the protection of human rights and fundamental freedoms in individual cases before the highest courts in the country—the constitutional appeal which is judged upon by the Constitutional Court, and the lawsuit for just satisfaction for the protection of the right to trial within a reasonable time before the Supreme Court—have had a significant role in promoting international law in court practice. This is because these instruments have allowed individual claimants seeking protection of their rights to rely on the vast bodies of international law and the applicable case law of the European Court of Human Rights. It was under the pressure of such non-state actors that the courts had to look closely into the rules and standards contained not only in international treaties, but also in the case law of the European Court of Human Rights.

As a result, in recent years it can be seen that both the Constitutional Court and the Supreme Court have invoked *sua sponte* rules of international treaty law and even the case law of the European Court of Human Rights.

An analysis of the case law of the highest judicial instances, the Constitutional Court and the Supreme Court, shows that there are no substantial differences in the manner these courts interpret key principles and concepts of international law in comparison with the standards of interpretation that are generally accepted.

The fact that the case law of all the courts in the country is made publicly available in online databases, and that such databases are updated regularly, serves greatly to increase the transparency of the judicial function and to build public trust in the judiciary.

The degree to which international law permeates the case law of courts in Montenegro differs according to the functional level of the court. The greatest level of permeation is with the highest judicial institutions. There are clear signs, however, that the lower courts are starting to rely on international law as well, primarily on treaty law.