



## Imprisonment of a man following his conviction by an unrecognised breakaway Balkan republic was unlawful

In 2010 the applicant was arrested and imprisoned for over two years by the Serbian authorities. He was arrested on the basis that he had been convicted of a crime in 1994 by the courts of the “Republic of Serbian Krajina” – an internationally unrecognised entity, composed of a territory that is now in the Republic of Croatia – and still had time left to serve in his sentence. The applicant complained to the European Court of Human Rights that this conviction had been issued by a court of an internationally unrecognised entity, and that the judgment had never been formally recognised by the Serbian courts.

In today’s **Chamber** judgment<sup>1</sup> in the case of [Mitrović v. Serbia](#) (application no. 52142/12) the European Court of Human Rights held, unanimously, that there had been a **violation of Article 5 § 1** (right to liberty and security) of the European Convention on Human Rights.

In particular, the Court held that any deprivation of a person’s liberty must be lawful, meaning that it must conform to the rules of national law. The applicant had been convicted by a “court” which had operated outside the Serbian judicial system. Under the rules of domestic law, the detention of a person is unlawful when it is on the basis of a decision of a foreign court which has not been recognised by the authorities in an appropriate procedure. However, in this case the Serbian authorities had conducted no proceedings for the recognition of a foreign decision and the applicant’s detention had therefore been unlawful.

### Principal facts

The applicant, Miladin Mitrović, now deceased, was a Bosnia and Herzegovina national who was born in 1943 and lived in Sremska Mitrovica (Serbia).

Back in 1994, Mr Mitrović was sentenced to 8 years’ imprisonment for murder by the courts of the “Republic of Serbian Krajina”. This was an internationally unrecognised self-proclaimed entity established on the territory of the Republic of Croatia during the wars in the former Yugoslavia. Mr Mitrović was imprisoned within the territory during the conflict, after which he was transferred to a prison in Serbia. However, in 1999 he was released for 10 days’ annual leave, and failed to return to prison. Mr Mitrović was re-arrested in July 2010 when he attempted to enter Serbia from Croatia, and sent to a Serbian prison to serve the remainder of his sentence. He lodged an appeal to the Constitutional Court to challenge the lawfulness of his imprisonment, and also civil proceedings to claim compensation for unlawful imprisonment – both of which were dismissed. Mr Mitrović was released in November 2012 following a pardon from the President of the Republic of Serbia. He died in October 2014.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Prior to his death, Mr Mitrović complained to the European Court of Human Rights that he had been imprisoned on the basis of a judgment of a court of an internationally unrecognised entity, and that this had violated Article 5 § 1 (a) (right to liberty and security).

The application was lodged with the European Court of Human Rights on 31 July 2012. Following the death of Mr Mitrović, the application was continued by his heirs: Ms Toma Mitrović, Mr Mladen Mitrović, Mr Milorad Mitrović and Ms Radmila Siroćuk.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,  
Branko Lubarda (Serbia),  
Luis López Guerra (Spain),  
Helen Keller (Switzerland),  
Dmitry Dedov (Russia),  
Alena Poláčková (Slovakia),  
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

### Article 5 § 1 (right to liberty and security)

The Court noted the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals to be free from arbitrary detention. It also highlighted the repeated references in the Court's case law to the requirement that any deprivation of liberty must be lawful. In order to meet the requirement of lawfulness, a deprivation of liberty must conform to the substantive and procedural rules of national law.

Mr Mitrović was convicted for murder by a "court" which operated outside the Serbian judicial system. However, the Serbian authorities conducted no proceedings for the recognition of a foreign decision, as required by the relevant provisions of the Criminal Procedure Code then in force.

In the cases substantially similar to the present one, the Supreme Court of Cassation took the view that the omission of such procedure was unlawful. The reasoning of the Constitutional Court does not contradict this conclusion, as it also found that the relevant procedure was not followed in Mr Mitrović's case. The Constitutional Court, however, took the view that the Mr Mitrović's right to liberty was not violated because his detention was "proportionate" to the crime he had committed.

Even if proportionality was a factor which should be taken into consideration when assessing whether a deprivation of liberty satisfies the requirements of Article 5 § 1, it would be relevant only subject to the precondition that such deprivation of liberty was lawful. However, under the rules of domestic law, detention of a person is unlawful when it is on the basis of a decision of a foreign court which has not been recognised by the Serbian authorities in an appropriate procedure. Given that the applicant was detained on the basis of a non-domestic decision which had not been recognized domestically, and in the absence of any other basis in domestic law for the detention, the requirement of lawfulness contained in Article 5 § 1 was not met.

The Court therefore found that Mr Mitrović's detention between 7 July 2010 and 15 November 2012 had been unlawful. Accordingly, there had been a violation of Article 5 § 1 of the Convention.

### Just satisfaction (Article 41)

The Court did not award Mr Mitrović any just satisfaction, as he had not submitted a claim for any.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.