

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DAŠIĆ v. MONTENEGRO

(Application no. 37409/23)

JUDGMENT

STRASBOURG

27 November 2025

This judgment is final but it may be subject to editorial revision.



In the case of Dašić v. Montenegro,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 37409/23) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 October 2023 by a Montenegrin national, Mr Nebojša Dašić ("the applicant"), who was born in 1989, lives in Podgorica and was represented by Mr D. Vujanović, a lawyer practising in Podgorica;

the decision to give notice of the complaint concerning the lawfulness of the applicant's detention to the Montenegrin Government ("the Government"), represented by their Agent, Ms K. Peković, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 6 November 2025,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Article 5 § 1 of the Convention regarding the exact time of his deprivation of liberty and the lawfulness of his subsequent detention.

I. SUMMARY OF THE CASE

2. Between 3.05 p.m. and 3.30 p.m. on 6 July 2023 the applicant was apprehended by the police. On account of injuries which he had sustained while trying to escape apprehension, the police called an ambulance at 3.40 p.m., and the applicant was then taken to hospital, as confirmed by several medical reports. A police report issued the same evening specified that the applicant had been deprived of his liberty at 8.15 p.m.

3. The following day a State prosecutor issued a provisional detention order (*rješenje o zadržavanju*). The order stated that the applicant would be detained for a maximum of seventy-two hours starting from the date and time he had been deprived of his liberty, "that is, from 8.15 p.m. on 6 July 2023".

4. At 5 p.m. on 9 July 2023 the applicant was brought before an investigating judge, who issued a detention order (*rješenje o pritvoru*). The order specified that the detention would last up to thirty days starting from 8.15 p.m. on 6 July. The judge dismissed as unfounded the applicant's

submission that his detention should have ended as it had already lasted longer than seventy-two hours, finding that, as the police report had specified that he had been deprived of his liberty at 8.15 p.m. on 6 July and as he had been brought before the investigating judge at 5 p.m. on 9 July, less than seventy-two hours had elapsed. An appeal lodged by the applicant against that decision was dismissed and the investigating judge's reasoning was endorsed.

5. The applicant lodged a constitutional appeal. He complained that the time at which he had been apprehended had been inaccurately recorded and that his detention had been unlawful, in breach of the Code of Criminal Procedure and Article 5 of the Convention.

6. On 31 July 2023 the Constitutional Court dismissed the constitutional appeal, stating that if there were any doubts about the calculation of any sentence handed down to the applicant or if the final judgment did not accurately reflect the length of time which he had spent in pre-trial detention, such a situation could be rectified in proceedings in the regular courts.

7. Between 4 August 2023 and 2 February 2024 the Court of First Instance examined of its own motion the applicant's detention order of 9 July 2023 and extended it seven times. These decisions were upheld by the High Court.

8. On 7 February 2024 the Court of First Instance found the applicant guilty of theft and sentenced him to eight months' imprisonment, which included the time he had already spent in detention "since 8.15 p.m. on 6 July 2023".

9. On 6 March 2024 the applicant was released.

10. On 3 July 2024 the High Court quashed the first-instance judgment, finding of its own motion that it was unclear how the first-instance court had established that the applicant had been deprived of his liberty at 8.15 p.m. The appeal court found that the Criminal Code had been violated to the applicant's detriment and ordered a retrial, referring indirectly to the provision relating to how the length of time an individual has been in detention or otherwise deprived of his or her liberty is counted towards the term of his or her sentence.

11. On 3 February 2025, following a retrial, the Court of First Instance found the applicant guilty of theft and sentenced him to eight months' imprisonment, specifying that the sentence would include the time he had spent in detention "between 3.05 p.m. on 6 July 2023 and 3.05 p.m. on 6 March 2024".

II. RELEVANT DOMESTIC LAW

12. Article 264 of the Code of Criminal Procedure, in so far as relevant, provides that authorised police officers may deprive a person of his or her liberty, but that they must make an official report indicating the time of deprivation of liberty. Article 267 provides that a suspect deprived of his or

her liberty may, in exceptional circumstances, be provisionally detained for a maximum of seventy-two hours from the moment of deprivation of liberty. Article 268 further provides that, if a State prosecutor considers that the reasons for detention persist, he or she shall ask an investigating judge to order the suspect's continued detention before the ongoing provisional detention order expires. A detainee must be brought before an investigating judge within the same period. Article 448 of the same Code in conjunction with Article 179, in so far as relevant, provide that a court's chamber, either at a proposal of the parties or of its own motion, must examine whether the reasons for detention still persist and issue a decision on the extension or termination of detention, upon the expiry of every thirty days until the indictment comes into force, and every two months after the indictment comes into force.

III. COMPLAINTS

13. The applicant complained that the time at which he had been apprehended had not been accurately registered. He argued that as a result, he had been unlawfully deprived of his liberty, which had also made his subsequent detention unlawful, in breach of Article 5 § 1 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

A. The lawfulness of the applicant's initial detention

1. Admissibility

14. The Government submitted that the applicant's complaint was premature. They maintained that the first-instance judgment finding the applicant guilty (see paragraph 11 above) could be reviewed by the higher courts and that if it were to be established in the criminal proceedings that the time at which the applicant had been deprived of his liberty had been incorrectly recorded, he would have the right to seek compensation for unlawful deprivation of liberty at the domestic level.

15. The applicant contested the Government's submissions and reaffirmed his complaint.

16. The Court reiterates that the scope of the review of the applicant's compliance with the rule on exhaustion of domestic remedies is limited by the Government's objections (see *Yordanov v. Bulgaria*, no. 56856/00, § 76, 10 August 2006, with further references).

17. Turning to the present case, the Court notes that the Government did not contend that the applicant had failed to exhaust remedies which had been available to him before he had lodged his application with the Court,

submitting instead that he would have the opportunity to lodge a civil claim for damages after the end of the criminal proceedings against him if it were to be established in those proceedings that the time at which he had been deprived of his liberty had been incorrectly recorded (see paragraph 14 above). In that connection the Court notes that the Constitutional Court's finding also referred to the calculation of a sentence and the question of whether a final judgment would accurately reflect the length of time which the applicant had spent in pre-trial detention, which situation could be rectified in proceedings in the regular courts (see paragraph 6 above). The Court further notes that the first-instance court, in a re-trial, indeed recalculated the sentence (see paragraphs 10-11 above). However, the Court observes that the issue in the present case is not the calculation of a sentence but the lawfulness of the applicant's initial detention, including whether he was brought before a judge within seventy-two hours of his arrest. In the circumstances of the present case, the Court considers that the Government have not shown that the re-calculation of the applicant's sentence before the regular courts and his lodging a compensation claim in that regard would amount to acknowledging a potential violation in respect of the lawfulness of his initial detention. Indeed, before lodging his application with the Court, the applicant had already raised his complaint domestically, including before the Constitutional Court, but none of those bodies explicitly or implicitly acknowledged that his detention had been improper or unlawful (see paragraphs 4 and 6 above). The Government's objection must therefore be dismissed.

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

19. The relevant principles as regards the lawfulness of detention are set out in, for example, *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 169-71, ECHR 2004-II). In particular, the provisions of Article 5 require the detention to be "in accordance with a procedure prescribed by law" and any decision taken by the domestic courts within the sphere of Article 5 to conform to the procedural and substantive requirements laid down by a pre-existing law. The Convention here refers essentially to national law, but it also requires that any deprivation of liberty be in conformity with the purpose of Article 5, namely to protect individuals from arbitrariness (ibid., § 171, and the authorities cited therein). Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (ibid.; see also *Mooren v. Germany* [GC], no. 11364/03, § 73, 9 July 2009).

20. Turning to the present case, the Court firstly notes that the applicant was *de facto* deprived of his liberty from the moment he was apprehended by the police, and that this situation continued while he was in the hospital and during the subsequent journey to the police station, and while he was being held there, as there is nothing to suggest that he could have freely decided not to accompany the police officers to the hospital or police station or that, once there, he could have left at any time without incurring adverse consequences (see *Rozhkov v. Russia (no. 2)*, no. 38898/04, § 79, 31 January 2017; *Aftanache v. Romania*, no. 999/19, §§ 81-83, 26 May 2020; and *Duğan v. Türkiye*, no. 84543/17, §§ 35-37, 7 February 2023).

21. The Court further notes that no arrest record or detention order was produced in respect of the period between 3.40 p.m. and 8.15 p.m. on 6 July 2023, even though the applicant was under the effective control of the police as of 3.40 p.m. at the latest (see paragraphs 2 and 19 above) and even though the domestic law provides that police officers, when depriving a person of his or her liberty, must draw up an official report indicating the time of the deprivation of liberty (see paragraph 12 above). The police in the present case did draw up such a report but indicated 8.15 p.m. as the time of the applicant's deprivation of liberty (see paragraph 2 above). The Court reiterates in that connection that the absence of a correctly recorded time in the arrest record must be considered a serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a grave violation of that provision (see *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 84 *in limine*, 20 May 2010, and the authorities cited therein). While the Court of First Instance during the retrial indeed recalculated the applicant's sentence, as already noted above (see paragraphs 11 and 17), it did not examine the lawfulness of the applicant's initial detention as such, and therefore provided no acknowledgment of the fact that there had been no arrest record or detention order for the period before 8.15 p.m. on 6 July 2023.

22. Moreover, the Court observes that the applicant was brought before the investigating judge on 9 July 2023 at 5 p.m., which was more than seventy-two hours after he had been apprehended by the police, which was also in breach of domestic law (see paragraphs 2-4 and 12 above), an issue which was not examined in substance by the Constitutional Court, despite the applicant raising it (see paragraphs 5 and 6 above) nor by the Court of First instance in the retrial (see paragraph 11 above). The Court reiterates that where fixed time-limits exist, a failure to comply with them may be relevant to the question of "lawfulness", as detention exceeding the period permitted by domestic law is unlikely to be considered to be "in accordance with the law" (see *Komissarov v. the Czech Republic*, no. 20611/17, § 50 *in fine*, 3 February 2022).

23. In view of all of the above, the Court considers that there has been a violation of Article 5 § 1 of the Convention in respect of the lawfulness of the applicant's initial detention.

B. The applicant's subsequent detention

24. As concerns the applicant's allegation that his continued detention was also unlawful, the Court notes that the applicant's detention ordered on 9 July 2023 was subsequently regularly examined and extended, between 4 August 2023 and 2 February 2024, by the Court of First Instance. All of these decisions were upheld upon appeal by the High Court (see paragraph 7 above). These decisions were all taken in accordance with the law and within the set time-limits (see paragraph 12 above).

25. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,359.40 in respect of the costs and expenses incurred before the domestic courts and the Court.

27. The Government contested the applicant's claim. In particular, they maintained that he had failed to submit proof that he had actually paid the costs and expenses that he claimed.

28. The Court awards the applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

29. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were also reasonable as to their quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 1,059.40 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applicant's complaint in respect of the lawfulness of his initial detention admissible and remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the lawfulness of the applicant's initial detention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,059.40 (one thousand and fifty-nine euros and forty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President