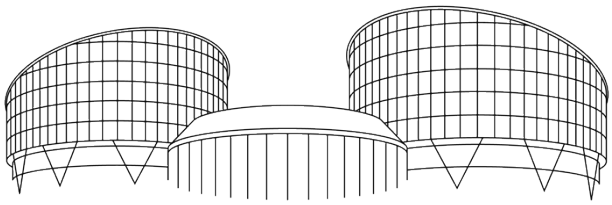

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOLIYEV v. RUSSIA

(Application no. 62400/10)

JUDGMENT

STRASBOURG

5 June 2012

FINAL

05/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Soliyev v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 62400/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Shokirzhon Shavkatovich Soliyev ("the applicant"), on 27 October 2010.

2. The applicant was represented by Ms Y. Ryabinina and Ms N. Yermolayeva. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 27 October 2010 the Court granted priority treatment to the case under Rule 41 of the Rules of Court and indicated to the Russian Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.

4. On 18 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Kazan.

6. In September 2009 the applicant left Uzbekistan for Russia looking for employment. On 8 September 2009 he arrived in the city of Kazan, Russia.

7. On 24 December 2009 the Uzbek security service charged the applicant with attempting to overthrow the constitutional order, belonging to a religious group (*the Islamic Movement of Uzbekistan*) and dissemination of subversive materials.

8. On the same date, an Uzbek judge issued an arrest warrant against the applicant. His name was put on a wanted list.

9. On 30 March 2010 the Russian police arrested the applicant, who had gone to the premises of the migration authority in order to apply for a temporary residence permit. The police relied on Articles 91 and 92 of the Code of Criminal Procedure ("the CCrP") concerning the arrest of suspects. According to the respondent Government, the presence of the applicant's name on the wanted list justified his arrest (Article 61 of the Minsk Convention).

10. On the same date, the Uzbek authorities confirmed to the Russian authorities that the applicant's name was still on the wanted list.

11. A deputy town prosecutor applied to the Vakhitovskiy District Court of Kazan seeking the applicant's detention with a view to extradition. On 1 April 2010 the District Court confirmed the lawfulness of the applicant's arrest and authorised his detention until 8 May 2010 in anticipation of an eventual extradition request. The court referred to Articles 97 § 1, 99, 108 and 466 of the CCrP. The court noted that the applicant was a foreign national and had no permanent place of residence in Russia; a foreign court had issued an arrest warrant against him and his name had been put on a wanted list; he had fled justice in Uzbekistan; and thus there was a risk that he would flee again or continue his criminal activity.

12. On 15 April 2010 the applicant applied to the Tatarstan Department of the Federal Migration Service for asylum.

13. On 4 May 2010 the Uzbek Prosecutor General's Office sent a formal extradition request to the Russian Prosecutor General's Office.

14. On 7 May 2010 the District Court examined a prosecutor's request and extended the term of the applicant's detention until 8 July 2010, with reference to Article 109 § 2 of the CCrP.

15. Before the expiry of the previous detention order, for unspecified reasons on 25 May 2010 the District Court issued a new detention order, extending the applicant's detention until 30 September 2010, with reference to Article 109 § 2 of the CCrP.

16. The applicant considered that it was impracticable in such circumstances to appeal against the detention order of 7 May 2010.

17. On 4 August 2010 the Russian Prosecutor General's Office authorised the applicant's extradition.

18. The applicant was notified of this decision on 23 August 2010. He brought judicial review proceedings against the extradition order, claiming that as his asylum proceedings were pending, the enforcement of the extradition order was suspended. He also asserted that if extradited he would run a serious risk of torture or inhuman treatment.

19. In the meantime, on 26 August 2010 the applicant was informed that his asylum request had been dismissed. He appealed to a higher migration authority.

20. On 20 September 2010 the Supreme Court of Tatarstan held a hearing on the applicant's appeal against the extradition order. The applicant's counsel pleaded that in the event of his extradition the applicant would be subjected to torture, like many other individuals charged in relation to religious or extremist activities. On the same date the Supreme Court of Tatarstan dismissed the case, considering that the allegations of ill-treatment had been based on mere assumptions and that the applicant had applied for asylum only when criminal proceedings against him had already been pending in Uzbekistan.

21. The applicant appealed to the Supreme Court of Russia. It appears that on an unspecified date it quashed the judgment of 20 September 2010 and ordered the re-examination of the extradition case.

22. On 30 September 2010 the District Court extended the applicant's detention until 30 November 2010. It is stated in the detention order that "if the defendant decides to lodge an appeal, he has the right to ask, within three days of receipt of the detention order, for his personal participation in the appeal hearing". On 30 September 2010 the applicant also signed a note confirming receipt of a copy of the detention order and that he had been informed of his rights to "participate in the appeal hearing and to have legal assistance".

23. On 4 October 2010 the applicant's lawyer lodged a statement of appeal, arguing that there was no evidence that the applicant would flee justice or reoffend; that his application for refugee status was pending; and that the prosecutor's extension request had been submitted to the district court less than seven days before the expiry of the previous detention order, in breach of Article 109 § 8 of the CCrP. The statement of appeal did not contain any request for the lawyer's and/or the applicant's participation in the appeal hearing.

24. On 5 October 2010 the prosecutor made observations in reply, stating that the applicant's arguments had been unfounded and that the application for refugee status had been dismissed.

25. According to the Government, the applicant and his counsel had been informed in advance of the date and time of the appeal hearing. On 8 October 2010 the Supreme Court of Tatarstan heard a prosecutor and upheld the detention order. Neither the applicant nor his lawyer had been present at the appeal hearing.

26. On 25 November 2010 the district court extended the applicant's detention to 30 January 2011.

27. Having re-examined the extradition case, on 10 December 2010 the Supreme Court of Tatarstan annulled the extradition order. With reference to the international reports and other material submitted by the applicant and the European Court's case-law on the matter, the court considered that there was a persistent practice of torture of detained suspects or convicts in Uzbekistan and that the applicant also faced a risk of such mistreatment. The court also noted that "in a number of judgments the European Court has held that the mere fact of detention in this country created a risk of ill-treatment".

28. The applicant was released on the same day.

29. On 3 February 2011 the Supreme Court of Russia examined the prosecutor's subsequent appeal and upheld the judgment of 10 December 2010. The appeal court noted that there had been a material difference between the criminal offences mentioned in the extradition request and the corresponding offences under the Russian Criminal Code; that the extradition order had been issued before the final decision had been taken on the applicant's refugee application; and that there had been indications of a risk of ill-treatment in Uzbekistan, in particular in the absence of any relevant assurances on the part of the Uzbek authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. Article 376 of the Russian Code of Criminal Procedure ("the CCrP") provided at the time that the parties should be informed of the date, time and place of an appeal hearing and that the court had to decide whether the defendant's presence was necessary. A convicted defendant, who was in detention and who had asked for his personal participation in the appeal hearing, was to be allowed to do so by way of personal presence in the courtroom or by way of a video link. A party's failure to appear before the appeal court was not to halt the appeal proceedings.

31. The Constitutional Court considered that Article 376 of the CCrP should be read in conjunction with Articles 16, 50 and 51 of the CCrP, thus requiring the provision of legal assistance in appeal proceedings, if requested by the defendant or in the circumstances provided by the law (including in cases of mandatory legal assistance) (decision no. 251-O-П of 8 February 2007).

32. The Constitutional Court interpreted Article 376 of the CCrP as applicable to appeal proceedings concerning the issue of detention (decision no. 66-O of 22 January 2004; see also decision no. 201-Д11-1 of the Supreme Court of Russia of 20 January 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant complained that his detention from 28 to 30 September 2010 had been unlawful, in breach of Article 5 § 1 of the Convention. It reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition...."

A. The parties' submissions

1. The applicant

34. The applicant argued that on 25 May 2010 his detention had been extended to 30 September 2010. Thereafter, a prosecutor's request for extension had been submitted only on 28 September 2010, whereas, under Russian law, it had required to be lodged seven days before the expiry of the previous detention order (that of 25 May 2010).

35. Subsequently, on 22 September 2011 the applicant argued that Article 466 of the CCrP had been inapplicable to his arrest because, at that time, the Russian authorities had not yet received an extradition request, as required by Article 466. Nor had the Russian court referred to Article 61 of the Minsk Convention in the detention order of 1 April 2010. Article 108 of the CCrP (within Chapter 13) had concerned the arrest of a person suspected of a criminal offence committed in Russia, and had thus been inapplicable to extradition cases. In any event, as stated by the Constitutional Court, Article 108 had required to be applied in conjunction with Article 466 of the CCrP.

2. The Government

36. The Government argued that the applicant's arrest had been justified with reference to the presence of his name on the international wanted list in relation to criminal charges in Uzbekistan. The circumstances of the applicant's arrest had fallen within the scope of Article 61 of the Minsk Convention, which had authorised such arrest. The Uzbek authorities had

been informed, without delay, of the applicant's arrest, as required by the Minsk Convention. In reply, the Uzbek authorities had confirmed their intention to seek the applicant's extradition and had submitted a copy of a detention order issued by an Uzbek court. Before receipt of a formal extradition request, the applicant's situation, including the issue of his detention, had been covered by Chapter 13 of the CCrP, rather than its Article 466. Thus, his detention had been authorised by a Russian court under Article 108 of the CCrP (despite the existence of the Uzbek detention order, which had also been issued by a court). That detention order had been issued within forty-eight hours, in compliance with the requirements of Russian law. In addition, the detention order of 1 April 2010 had limited the applicant's detention period to forty days, in compliance with Article 62 of the Minsk Convention, in anticipation of the receipt of the Uzbek extradition request. Such a request had been received within the required forty-day period.

B. The Court's assessment

37. The Court reiterates that Article 5 § 1(f) of the Convention does not demand that detention be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1(f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1(f). The deprivation of liberty must also be "lawful" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009). Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (*ibid.)*.

38. Turning to the circumstances of the present case, the Court first observes that the applicant does not raise any serious argument which might suggest that the extradition proceedings were not conducted with the requisite diligence. Instead, the main thrust of his argument before the Court related to the legality issue. As regards the applicant's detention from 28 to

30 September 2010, even accepting that the prosecutor's extension request was submitted to the district court in breach of the seven-day period, the Court considers that this procedural irregularity was not such as to entail a breach of Article 5 § 1 of the Convention. Importantly, it should be noted in that connection that the applicant's detention during that period of time remained authorised by the previous detention order of 25 May 2010, which, as accepted by the applicant, was lawful. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

39. As to the remaining complaints concerning the legality of the applicant's detention, the Court observes at the outset that there is no indication that the applicant raised before the court which authorised his detention on 1 April 2010 – at least in substance – the issues relating to the interpretation and application of various provisions of the Russian Code of Criminal Procedure (Articles 108 and 466) alone or in conjunction with the Minsk Convention. In addition, it should be observed that he did not appeal against the detention order of 1 April 2010.

40. Noting that the respondent Government did not plead non-exhaustion of domestic remedies, the Court observes that, in any event, the above complaints (see paragraph 35 above) were first raised before the Court on 22 September 2011, while the applicant had been released on 10 December 2010. These complaints cannot be seen as an elaboration of the initial complaint relating to the lawfulness of the applicant's detention from 28 to 30 September 2010. The Court reiterates that the running of the six-month time-limit for complaints not included in the initial application is not interrupted until the date when such later complaints are first submitted to the Court (see, among others, *Pavlenko v. Russia*, no. 42371/02, § 94, 1 April 2010).

41. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

42. The applicant further complained that there had been no effective procedure by which he could have challenged his detention. He also complained that he and his lawyers had not been afforded an opportunity to be present at the appeal hearing on 8 October 2010. The Court will examine these complaints under Article 5 § 4 of the Convention (see *Reinprecht v. Austria*, no. 67175/01, § 38, ECHR 2005-XII).

43. Article 5 § 4 of the Convention reads as follows:

"...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful..."

A. Admissibility

44. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. Thus, they must be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant complained that he and his lawyers had not been afforded an opportunity to be present at the appeal hearing on 8 October 2010. He also argued that because the detention order of 7 May 2010 had been "replaced" by a new detention order on 25 May 2010 without any valid reason, he had not realistically had the opportunity to lodge an appeal against the first detention order or to obtain release by appealing against the second one (since the first one had remained in force until July 2010). Lastly, the applicant argued that he had not been able to apply for release for long periods following the detention order of 25 May 2010.

46. The Government argued that the applicant could have lodged appeals against the detention orders but had failed to do so, except as regards the detention order of 30 September 2010. The applicant and his lawyer had been informed "as to the scheduling of the appeal hearing". In addition, on 7 October 2010 the applicant's lawyer had been "informed" of the hearing by a telegram. None of them had asked for adjournment. Nor had they expressed a wish to participate in the appeal hearing, as required by Article 376 of the Code of Criminal Procedure (see paragraph 30 above).

2. The Court's assessment

(a) General principles

47. The Court reiterates that the Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness (see *Varbanov v. Bulgaria*, no. 31365/96, § 58, ECHR 2000-X).

48. Article 5 § 4 of the Convention entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty. The notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that a detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *A. and Others*, cited above, § 202, with further references).

49. Article 5 § 4 guarantees a remedy that must be accessible to the person concerned (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 174-177, 17 January 2012; and *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 45, Series A no. 107).

50. Where the decision depriving a person of his liberty is one taken by an administrative body, Article 5 § 4 obliges the Contracting States to make available to the person detained a right of recourse to a court. When the decision is made by a court at the close of judicial proceedings, the supervision required by Article 5 § 4 is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after "conviction by a competent court" under Article 5 § 1 (a) of the Convention; or where detention of a vagrant, provided for in Article 5 § 1 (e), is ordered by a "court" within the meaning of paragraph 4 (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12).

51. In order to constitute such a "court" an authority must provide the fundamental guarantees of procedure applied in matters of deprivation of liberty. If the procedure of the competent authority does not provide them, the State cannot be dispensed from making available to the person concerned a second authority which does provide all the guarantees of judicial procedure. The intervention of one organ satisfies Article 5 § 4, but on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (ibid.).

52. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1. The reviewing "court" must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see *A. and Others*, cited above, § 202).

53. The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the

type of deprivation of liberty in issue. It is not the Court's task to enquire into what would be the most appropriate system in the sphere under examination. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A).

54. In a number of cases under Article 5 § 1 (e) concerning "persons of unsound mind" the Court stated that a person detained for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention (see *Stanev*, cited above, § 171, with further references). Long intervals in the context of automatic periodic review may give rise to a violation of Article 5 § 4 (see, among others, *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244).

55. As to the requirement of procedural fairness under Article 5 § 4, the Court reiterates that this Article does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, as already mentioned, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others*, cited above, § 203, with further references). The proceedings must be adversarial and ensure equality of arms (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). It is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see, among others, *Niedbała v. Poland*, no. 27915/95, § 66, 4 July 2000, and *Megyeri*, cited above, § 22, concerning detention in the context of paragraph 1 (c) and (e) of Article 5, respectively).

56. Therefore, some form of adversarial proceedings is required in cases concerning detention with a view to extradition (see *Sanchez-Reisse*, cited above, § 51).

(b) Application of the principles to the present case

(i) Procedure for review of detention

57. The Court observes that, unlike in some previous Russian cases concerning detention with a view to extradition (see, among many others, *Nasrulloyev v. Russia*, no. 656/06, §§ 87-89, 11 October 2007, and *Dzhurayev*, cited above, § 68), the applicant's detention was ordered by a Russian court rather than a foreign court or a non-judicial authority. There is

no doubt that this court satisfied the requirement of a "court" mentioned in Article 5 § 4 of the Convention.

58. It is also observed that the initial detention order was issued on the application of a prosecutor's office and that the court limited the period of the applicant's detention in the initial detention order, which was amenable to be extended. Unlike in previous cases concerning Russia (see, among others, *Muminov v. Russia*, no. 42502/06, § 114, 11 December 2008), before the expiry of the above term, it was subsequently subject to extension requests from a prosecutor's office, and was extended on several occasions, including on 25 May 2010, also for specific periods of time.

59. The Court considers that the proceedings by which the applicant's detention was ordered and extended amounted to a form of periodic review of a judicial character (see *Stanev*, cited above, § 171). It is not in dispute that the first-instance court was enabled to assess the conditions which, according to paragraph 1 (f) of Article 5, are essential for "lawful" detention with a view to extradition.

60. In addition, while Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007), it was open to the applicant under Russian law to appeal against the detention orders to a higher court, which would have been able to review them on various grounds. The Court observes in that connection that, for unspecified reasons, the applicant chose not to appeal against the initial and some other detention orders. As with the procedure before the first-instance court, there is no reason to doubt that an appellate court would have been capable of assessing the lawfulness of the applicant's detention with a view to extradition. Except for the appeal proceedings concerning the detention order of 30 September 2010 (see paragraphs 63-67 below), the applicant has not adduced any specific argument contesting the effectiveness of the available procedure or substantiating any unfairness in such proceedings. As previously mentioned by the Court, where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court will not be concerned, to the same extent, with the proceedings before a court of appeal if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded the detainee the appropriate procedural guarantees (ibid). The applicant could have raised various arguments relating to his detention, including those relating to the requirement of diligence in the conduct of the extradition proceedings and the length of the authorised detention period, when a court examined the prosecutor's renewed request for the extension of his detention or on appeal against the detention order.

61. In the Court's view, the applicant was thereby enabled to "take proceedings" by which the lawfulness of his detention could have been effectively assessed by a court.

62. There has therefore been no violation of Article 5 § 4 of the Convention in the present case as regards the procedure for review of the applicant's detention.

(ii) Participation in the appeal hearing on 8 October 2010

63. The Court observes that on 30 September 2010 a court extended the applicant's detention with a view to extradition. The detention order of 30 September 2010 indicated that the applicant would have to ask for his personal participation in the appeal hearing concerning the issue of his detention (see paragraph 22 above). It is uncontested that neither the applicant nor his lawyer made such a request prior to the appeal hearing.

64. The Court considers that this requirement of Russian law does not in itself contradict the guarantees of Article 5 § 4, if the procedure is clearly set out in domestic law and complied with by all actors in the proceedings, including the courts themselves (see, *mutatis mutandis*, *Kononov v. Russia*, no. 41938/04, § 40, 27 January 2011, in the context of appeal proceedings against conviction under the criminal head of Article 6 of the Convention).

65. The appeal court did not draw any conclusions in relation to the notification procedure and the defence's absence from the appeal hearing. It has not been argued before this Court that, by failing to make such a request under Article 376 of the CCrP, the defence validly "waived" any specific right or guarantee. Quite the contrary, the Government affirmed that the appeal court had informed both the applicant and his lawyer of the appeal hearing in advance. Therefore, it does not appear that the alleged failure to express a wish to participate in the appeal hearing would necessarily have entailed examination of the appeal in the absence of the applicant or, at least, his lawyer.

66. Furthermore, in the absence of any evidence to the contrary, the Court accepts that the applicant and his lawyer were not informed of the appeal hearing and, thus could not and did not attend it. However, although regrettable, this non-notification did not entail, in the circumstances of the case, a breach of Article 5 § 4 of the Convention. The Court notes in that connection that the applicant and his lawyer were present at the detention hearing before the first-instance court. There is no indication that this hearing was unfair. Thereafter, the lawyer appealed, complaining, mainly, of the belated nature of the extension request from the prosecutor (see paragraph 23 above). The appeal court examined the issue of the applicant's detention on the basis of written submissions and upheld the detention order issued by the lower court. It does not appear that the prosecutor made any additional oral argument or adduced new evidence. In fact, before the Court the applicant has not made any specific argument as to whether the absence

of the defence entailed, in the circumstances, a violation of the principle of equality of arms in the appeal proceedings.

67. Taking this set of detention proceedings as a whole, there has therefore been no violation of Article 5 § 4 of the Convention on this account.

III. RULE 39 OF THE RULES OF COURT

68. Having regard to the circumstances of the present case, the Court finds it appropriate to lift the measure indicated to the respondent Government under Rule 39 of the Rules of Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning review of the applicant's detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

3. *Decides* to discontinue the application of the measure indicated to the Government under Rule 39 of the Rules of Court.

Done in English, and notified in writing on 5 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President