CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF J.S. AND A.S. v. POLAND

(Application no. 40732/98)

JUDGMENT

STRASBOURG

24 May 2005

FINAL

12/10/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of J.S. and A.S. v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 3 May 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 40732/98) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Polish applicants, Mr J.S. and Ms A.S. The President of the Chamber acceded to the applicant's request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The Polish Government ("the Government") were represented by their Agents, Mr Krzysztof Drzewicki and, subsequently, by Mr Jakub Wołąsiewicz of the Ministry of Foreign Affairs

3. The applicants alleged that their right to a fair hearing within a reasonable time had been breached.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1

6. By a decision of 5 October 2004, following a hearing on admissibility and the merits (Rule 54 § 3), the Court declared the application admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants, Mr J.S. and Ms A.S. are a married couple residing in Stegna.

9. By way of an administrative decision of 29 October 1948 a property owned by the second applicant's father W.U. and located in Czarzaste-Chodubki was expropriated pursuant to provisions of the 1944 Decree on Agrarian Reform. It was stated in the decision that W.U. was the owner of this property.

10. On 21 December 1948 this decision was upheld by the Minister of Agriculture, who considered that the factual findings of the expropriation commission as to the area of the property concerned could not be called into question given that the commission was composed not only of agents of the administration, but also of political representatives.

11. By an on-site protocol of 7 May 1949 a commission, established under the provisions of the 1944 Decree on Agrarian Reform, inspected the property and found that land situated in Czarzaste-Chodubki owned by the second applicant's father W.U. consisted of 68 hectares of land, out of which 50 hectares 3175 square metres constituted arable land.

12. On 15 February 1990 the applicants lodged with the Ministry of Agriculture an application to have the expropriation decision declared null and void under Article 156 of the Code of Administrative Procedure or amended under Article 155 of the Code of Administrative Procedure.

13. On 3 March 1995 the applicants complained to the Supreme Administrative Court about the failure of the administration to rule on their 1990 application.

14. On 24 March 1995 the applicants submitted further pleadings to that court, indicating that certain relevant documents had been found in the Ostrołęka Regional Office which showed that the on-site commission had wrongly calculated the surface of the property concerned in 1949. The area of the property was in fact, in the light of the newly found documents, 49,92 hectares of arable land. Thus, the property should not have been subject to expropriation within the framework of the agrarian reform law as it did not attain the minimum threshold of 50 hectares of arable land. The applicants further referred to an official protocol drawn up in 1957, which confirmed this finding.

15. By a judgment of 9 October 1995 the Supreme Administrative Court ordered the Minister of Agriculture to issue a decision concerning the applicants' application of 1990 within two months from the date of the judgment.

16. By a letter of 10 November 1995 the applicants informed the Ministry that the property in question had had a surface of approximately 44 hectares, as shown by the protocol of 8 April 1948 and by another document drawn up by land surveyor A.P. in 1948.

17. On 17 April 1996 the Ministry of Agriculture obliged the Ostrołęka Regional Office to take further evidence in order to establish the legal status of the property concerned under the provisions of civil law, i.e. to determine who had been the owner of the property concerned at the time of expropriation.

18. The applicants objected thereto by a letter of 19 May 1996, pointing out that the question who had been the owner of the property in 1948 in terms of substantive civil law was entirely extraneous to the administrative case which was pending before the Ostrołęka Regional Office. Any issues concerning the assessment of the link between the former owner of the property and the applicants from the angle of substantive civil law on inheritance was irrelevant for the administrative case, which concerned only the examination of the lawfulness of the administrative decision on expropriation. They insisted that a decision on their restitution claim be given in accordance with the judgment of the Supreme Administrative Court of 1995, which had set a two-month time limit for the authorities to do so.

19. They reiterated their submissions in a letter of 29 May 1996. On 23 July 1996 the applicants again requested that a decision be given. On 3 December 1996 the applicants reiterated their request that the decision on the merits of the case be given and complained that the proceedings had remained pending for a long time. They referred again to the Supreme Administrative Court's judgment of 9 October 1995.

20. By a decision of 18 July 1997 the Ministry stayed the proceedings on the ground that a certain H.S. had submitted a request to quash the expropriation decision. She had argued that the second applicant's father W.U. was not its owner, but only its lessee. She contended that it was her father T.U., who owned the property concerned. However, she had failed to submit conclusive documents to prove it. The proceedings were therefore stayed pursuant to Article 97 § 1 of the Code of Administrative Procedure until relevant documents had been submitted.

21. The applicants appealed against the decision to stay the proceedings. They reiterated their request that a decision be given and emphasised that they had remained pending since 1990. They argued that the decision to stay the proceedings had been taken in disregard of the essential substantive law elements of the case. The documents required by the Ministry and relating to the civil law status of the property at the time of expropriation were entirely irrelevant to the administrative case.

22. By a letter of 6 August 1997 the applicants reiterated their arguments. The proceedings remain stayed. The applicants submit that all their efforts to have them resumed have been unsuccessful.

II. RELEVANT DOMESTIC LAW

1. Administrative proceedings by which a final administrative decision can be challenged

23. Under Polish law no provisions have been enacted allowing specifically for the redressing of wrongs committed in connection with expropriations effected within the framework of the agrarian reform. Therefore no specific legal framework is available, enacted with the purpose of mitigating the effects of certain infringements of property rights.

24. However, it is open to persons whose property was expropriated or their legal successors, to institute, under Article 156 of the Code of Administrative Procedure, administrative proceedings in order to claim that the expropriation decisions should be declared null and void as having been issued contrary to law. In particular, a final administrative decision can be declared null and void at any time if it was issued without a legal basis, or in flagrant violation of law.

25. Decisions flawed as a result of lesser procedural shortcomings, listed under items 1, 3, 4 and 7 of Article 156, such as those given by an authority which lacked competence to issue a decision in a given case, or in a case which had already been decided or addressed to a person not being a party to the proceedings, can only be declared null and void if less than ten years have elapsed from the date on which such decisions were given. In respect of such decisions it is only possible to declare that they were issued contrary to law; the decisions themselves remain valid.

26. If the flaw that taints the challenged decision is of a substantive character, i.e. if the decision had been given without a legal basis or in flagrant violation of law, the administrative authority shall declare it null and void.

27. A decision to declare the old decision null and void, or a refusal to do so, may ultimately be appealed to the Supreme Administrative Court.

2. Relevant provisions of the Decree on Agrarian Reform of 6 September 1944

28. Article 1 of the Decree provides that “the agrarian reform in Poland is a State and economic imperative and shall be realised ... pursuant to principles set forth in the manifesto of the Polish Committee of National Liberation”.

Article 2 § 1 of the Decree, in so far as relevant, reads:

> "The following agricultural estates shall be designated for the purposes of the agrarian reform: ...
>
> e) being a property or a co-property of natural persons or legal entities, if the entire area of the estate exceeds either 100 hectares in total, or 50 hectares of arable land ...
>
> All real estate, referred to in items ... , e) above shall, with no delay and without compensation, be taken over by the State. "

3. Length of administrative proceedings

(a) Before 30 June 1995

29. Under Article 35 of the Code of Administrative Procedure of 1960, the administration is obliged to deal with cases without undue delay. Simple cases should be dealt without any delay. In cases requiring some enquiry a first-instance decision should be given in no more than one month. In particularly complex cases decisions shall be taken within two months.

30. If the decision has not been given within those time limits, a complaint under Article 37 of the Code may be filed with the higher-instance authority, which shall fix an additional time limit, establish the persons responsible for the failure to deal with the case within the time-limits, and, if need be, arrange for preventive measures to be adopted in order to prevent further delays.

(b) From 30 June 1995 until 1 February 2004

31. In 1995 the Supreme Administrative Court Act was adopted, which entered into force on 1 October 1995. It created further procedures in which a complaint about the administration's failure to act could be raised.

32. Under Article 17 of that Act, that court is competent to examine complaints about the administration's inactivity in administrative proceedings in cases referred to in Article 16 of the Act.

33. Pursuant to Article 26 of the Act, if a complaint about the inactivity of an administrative authority is well-founded, the court shall oblige the competent authority to give a decision, or to carry out the factual act, or to confer or acknowledge an individual entitlement, right or obligation.

34. On 1 January 2004 the Law on Administrative Courts came into force, which replaced the 1995 Act and established a two-tiered system of appeals against administrative decisions to administrative courts.

THE LAW

35. The applicants alleged a violation of Article 6 § 1 of the Convention, arguing that the proceedings in which they are seeking to have the expropriation decision given in 1948 declared null and void under the relevant provisions of the Code of Administrative Procedure have been excessively lengthy.

36. The relevant provisions of Article 6 § 1 read:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal ..."

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO THE APPLICABILITY OF ARTICLE 6 § 1 OF THE CONVENTION

37. The Court must first determine whether Article 6 § 1 of the Convention is applicable to the proceedings concerned.

A. Arguments before the Court

38. The Government first submitted that the proceedings in question did not concern the applicants' civil rights and obligations within the meaning of Article 6 of the Convention. This was so because the applicants had not shown that their legal predecessor W.U. had been the owner of the property concerned in 1948. The Government argued that he had never acquired ownership of this property, which had been bequeathed to him under the 1918 will drawn up by his father, K.U., on certain conditions. As those conditions had never been fulfilled, W.U. had not become owner of the property and his name had not been listed in the relevant land register.

39. The Government referred in this respect to the letter submitted in 1997 to the Ostrołęka Regional Office by H.S, a granddaughter of the late K.U. She had argued therein that in 1948 W.U. had not been the owner of the property within the meaning of civil law (§ 20 above). Having regard to this letter, the Government were of the view that the proceedings in which the applicants claimed that the expropriation decision be annulled on account of its alleged unlawfulness did not concern their "civil rights and obligations", because the applicants' predecessor in title had never become the owner of the property concerned.

40. The applicants emphasised that the only ground for questioning the validity of the rights of their legal predecessor was the letter submitted by H.S. in 1997, which had never been corroborated by any further evidence. They maintained that the status of W.U. as the rightful owner under provisions of civil law had never been challenged since 1918. No civil law claims to the property had ever been advanced by any third parties before

the courts and no such claims had ever been confirmed by any judicial decision. Moreover, in the applicants' argument, the authorities who gave the expropriation decision in 1948 clearly considered their legal predecessor as the owner of this property.

41. The applicants further argued that the Ministry had ordered them to submit various documents to prove the status of the property concerned, in particular its ownership, under provisions of civil law. They emphasised that the civil law issues, pursued by the Ministry, were irrelevant to the administrative proceedings at hand. It was only the lawfulness of the 1948 decision and its compliance with the then-applicable expropriation laws which the administrative bodies were called upon to examine in these proceedings. Therefore any civil law claims of third parties that might have arisen against the background of the 1918 will could not be determined within the framework of these proceedings. The applicants contended that the Ministry had raised these civil law issues only to prolong the administrative proceedings complained of. They had on numerous occasions protested against the proceedings being unduly focused on the civil law aspects of the case to the detriment of the administrative law aspects, which had eventually resulted in bringing the proceedings to a halt.

42. In addition, the land register of the property had been destroyed during the Second World War. Therefore it was impossible to submit this ultimate proof of the applicants' predecessor's ownership, a fact of which the Government were well aware as this was the argument which the applicants had repeatedly invoked in the proceedings.

43. Finally, it was emphasised that that the property concerned had been too small to fall within the ambit of the application of the 1944 Decree on Agrarian Reform. Its area had been less than 50 hectares, the threshold for properties subjected to expropriation provided for by that decree. They referred in this respect to the following documents: an on-site protocol drawn up on 8 April 1948, according to which the area of the arable land had been 44,17 hectares, a plan drawn up in 1948 by a land surveyor according to which the area had been 43,62 hectares, and certain documents which had been found in the Ostrołęka Regional Office, which showed that the area of the property was 49,92 hectares (§§ 14 and 16 above).

44. Therefore, in the applicants' view, the expropriation decision given in 1948 was in flagrant contravention of the substantive provisions setting out the then-applicable criteria for expropriation of agricultural properties and should have been declared null and void within a reasonable time. The applicants concluded that Article 6 of the Convention was applicable to the proceedings in question.

B. The Court's assessment

45. The Court recalls that Article 6 applies under its "civil head" if there was a "dispute" ("*contestation"*) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. That dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise. The Court must also be satisfied that the result of the proceedings at issue was directly decisive for the right asserted (see, *mutatis mutandis*, *Georgiadis v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 958-959, § 30, and *Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1160, § 38).

46. On the question of whether or not a given right is "civil" for the purposes of Article 6 § 1, the Court has consistently held that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that this provision applies irrespective of the status of the parties, the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter (see *Georgiadis v. Greece*, loc. cit., § 34).

47. The Court first observes that it is not in dispute in the instant case that the applicants' legal predecessor W.U. was clearly regarded by the authorities which gave the expropriation decision in 1948 as its rightful owner and that he was the addressee of this decision. The Court also notes that this decision, given within the framework of a sweeping agrarian land reform, deprived W.U. of any rights he might have had in respect of the property concerned.

48. In this connection, it notes the Government's argument that at that time he was not the owner of that property in terms of civil substantive law, but only its lessee. However, this argument is based only on one letter of a private party, submitted in 1997, claiming that W.U. had not been the owner of the property in question. It has not been argued or shown that the status of W.U. as the owner of the property in 1948 has ever been challenged, before or after 1997, in any civil proceedings competent to give a ruling on the inheritance rights relating to the property. Neither has it been shown that any judicial decision in this sense has ever been given.

49. The Court further notes that, pursuant to Article 156 § 1 (2) of the Code of Administrative Procedure, in cases in which a breach of substantive law is complained of, such a decision can be declared null and void at any time. In the present case, the applicants claim that the expropriation decision was given in breach of the substantive provisions of the expropriation law. They seek annulment of this decision, arguing that the area of the property was smaller than 50 hectares provided for by law as the lowest threshold of properties subject to expropriation. They rely on a number of documents

challenging the factual findings made in 1948 by the authorities, in particular the finding that the area of the property concerned did not exceed 50 hectares (see §§ 14, 16 and 43 above). The Court notes that if the authorities established that the area of the property was indeed smaller than this expropriation threshold laid down by law, it could then be reasonably expected that they would declare the expropriation decision null and void. Such a declaration could create a legally enforceable claim for the applicants to have the property restored to them, or to be awarded adequate compensation.

Hence, the outcome of the pending restitution proceedings will have a decisive impact upon the applicants' property rights. In these circumstances, it would be difficult to deny that this dispute was genuine and serious enough to bring the proceedings concerned within the ambit of Article 6 § 1 of the Convention.

50. In this context, the Court recalls the Grand Chamber's admissibility decision in the case of *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII. In that case, the applicant complained that his rights as guaranteed by Article 1 of Protocol No. 1 and by Article 6 of the Convention had been violated in the restitution proceedings, conducted under the Czech Land Ownership Act of 1991, in that the national authorities had refused to grant the applicant's restitution claims and in that the restitution proceedings were unfair. When considering the complaint under Article 1 Protocol No. 1 to the Convention, the Court found that the particular claim raised by the applicant could not be regarded as giving rise to a "legitimate expectation", because he had not complied with the relevant substantive requirements laid down by the restitution law. Nonetheless, the Court pursued its examination of the applicant's complaint under Article 6.

51. This approach demonstrates that there is no necessary interrelation between the existence of claims covered by the notion of "possessions" within the meaning of Article 1 of Protocol No. 1 and the applicability of Article 6 § 1. The Court considers that the fact that the applicants did not have a legitimate expectation to have their property restored to them under the provisions of domestic law is sufficient to exclude the application of Article 1 of Protocol No. 1 of the Convention to the circumstances of the case. At the same time, it does not suffice to exclude a conclusion that, once a genuine and serious dispute concerning the existence of property rights arises, the guarantees of Article 6 § 1 become applicable (*Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-...).

52. The Court further recalls that guarantees of Article 6 of the Convention do not apply to proceedings in which the re-opening of proceedings terminated by a final judicial decision is sought (see, among many other authorities, *Wierciszewska v. Poland, no. 41431/98*, § 35, 25 November 2003). However, the Court observes that the circumstances of

the present case differ markedly from those in which the decisions referred to above were given.

In this connection, the Court notes that in the present case the applicants seek a decision quashing the 1948 expropriation decision, arguing that it was unlawful. Had the applicants been successful, the expropriation decision would have ceased to have any legal effect. Thus, what the applicants seek in the proceedings which they launched in 1990, is not the re-opening of a case terminated by a final decision on the merits. The result they seek is to have the expropriation decision given in 1948 quashed by the competent administrative authority. The Court observes that such a legal result is a different one from that which is normally sought in proceedings concerning a request for the re-opening of a case. Accordingly, it cannot be maintained that Article 6 is not applicable to the proceedings on this basis.

53. Lastly, the Court considers that the special context of the present case must be taken into consideration when deciding whether Article 6 of the Convention is applicable to the proceedings concerned. In this connection, the Court considers that the problems involved in the applicants' case are part of the process of transition from the former communist legal order and its property regime to one compatible with the rule of law and the market economy. Such a process, in the very nature of things, is fraught with difficulties. The Court reiterates in this respect that the Convention cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention (*Kopecký v. Slovakia* [GC], no. 44912/98, § 35; *Maltzan and Others v. Germany*, nos. 71916/01, 71917/01, 10260/02, (dec.), § 74, 2 March 2005). Nor is there any general obligation under the Convention to establish legal procedures in which restitution of property could be sought. However, once a Contracting State decides to establish legal procedures of such a kind, it cannot be exempted from the obligation to respect all relevant guarantees provided for by the Convention, in particular by its Article 6 § 1.

54. In the light of the above, the Court concludes that Article 6 of the Convention is applicable to the proceedings concerned in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Period to be taken into consideration

55. The Court notes that the proceedings began on 15 February 1990 and are still continuing. They have therefore already lasted over fifteen years, of which over eleven years falls within the Court's temporal competence, Poland having recognised the right of individual petition as from 1 May 1993. Given its jurisdiction *ratione temporis*, the Court can only consider

the period which has elapsed since 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see, among other authorities, *Zwierzyński v. Poland,* no. 30210/96, § 123, ECHR 2000-XI).

B. Reasonableness of the length of the proceedings

56. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. It will also take account of what is at stake for the applicant (see, among many other authorities, *Beller v. Poland*, no. 51837/99, § 67).

57. The applicants argue that the proceedings in the case were exceedingly lengthy. The Government contest their arguments.

58. The Court observes that the proceedings, instituted on 15 February 1990, remained dormant from 1990 to 1995, when the applicants availed themselves of the procedure provided for by the Code of Administrative Procedure and complained to the Supreme Administrative Court about the failure of the administration to rule on their application. That court, by its judgment of October 1995, obliged the administrative authorities to give a decision within two months. This judgment was not complied with and no decision was rendered, either within the time-limit set out by the Supreme Administrative Court, or later. Subsequently, on 17 April 1996 the Ministry of Agriculture took steps in order to obtain evidence relevant for the legal assessment of the application. However, the proceedings were stayed in 1997 as the Ministry ordered that H.S. submit documents to prove her rights to the property (see § 20 above). The applicant's appeal against this decision was unsuccessful. Later on, on 6 August 1997, the applicant reiterated their arguments and requested that the proceedings be resumed. They argued that the civil law questions pursued by the Ministry were entirely irrelevant to the administrative case they had launched. Their efforts were unsuccessful, and the restitution proceedings have remained stayed ever since, essentially as a consequence of civil claims to the property having been raised at a late stage of the proceedings.

59. Having regard to all the circumstances of the case, the Court considers that the overall length of the proceedings complained of has exceeded what was reasonable. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

61. The applicants sought compensation for pecuniary and non-pecuniary damage in the amount of PLN 3,626,420.

62. The Government submitted that in so far as the applicants' claims related to alleged pecuniary damage, they had failed to adduce any evidence to show that they had suffered any actual loss on account of the protracted character of the proceedings. As to non-pecuniary damage, the Government submitted that the amount claimed by the applicant was excessive.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. On the other hand the Court is of the view that the applicants must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. The Court decides to award on an equitable basis EUR 5,500 under this head.

B. Costs and expenses

64. The applicants did not seek further reimbursement of legal costs and expenses in connection with the proceedings before the Court.

C. Default interest

65. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection and *dismisses* it;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President