CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GARCIA ALVA v. GERMANY

(Application no. 23541/94)

JUDGMENT

STRASBOURG

13 February 2001

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In the case of Garcia Alva v. Germany,

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

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr L. FERRARI BRAVO,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mr T. PANŢÎRU,
Mr H. JUNG, ad hoc *judge*, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 January 2001,

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

PROCEDURE

1. The case was referred to the Court by a Peruvian national, Mr Luis Antonio Garcia Alva ("the applicant"), on 25 November 1998 and by the European Commission of Human Rights ("the Commission") on 9 December 1998. It originated in an application (no. 23541/94) against Germany lodged with the Commission under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicant, on 4 January 1994.

2. The applicant was represented by Mr M. Zieger, a lawyer practising in Berlin (Germany). The German Government ("the Government") were represented by their Agent, Ms H. Voelskow-Thies, *Ministerialdirigentin*.

3. The case concerns the applicant's complaint that, in the proceedings for the review of his detention on remand, his defence counsel had no access to the criminal files. The applicant invokes Article 5 § 4 of the Convention.

4. On 14 January 1999 a Panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court assigned the case to the First Section. Within this Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr G. Ress, the judge elected in respect of Germany, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr H. Jung to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

6. On 12 October 1999 the Court (First Section) decided, pursuant to Rule 59 § 2 *in fine*, not to hold a hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a Peruvian national, born in 1964, and is a graduate in computer science.

8. On an unspecified date, the Berlin prosecution authorities started an investigation against the applicant and other persons on suspicion of involvement in drug-trafficking (*Handel mit Betäubigungsmitteln*). In March 1993, when questioned as a witness in connection with other investigation proceedings, Mr K., who had been convicted of drug-trafficking in 1992 and sentenced to twelve years' imprisonment, outlined his drug-trafficking activities in Germany since 1991 and implicated several persons involved therein, including the applicant. He gave further details on those issues when questioned in Berlin in late March. He stated, *inter alia,* that the applicant had once kept 16 kg and on four other occasions 1,5 kg of cocaine for a third person in an apartment in Berlin. He also maintained that the applicant had twice sold him cocaine.

9. On 6 April 1993 preliminary investigations were initiated against the applicant on suspicion of offences under the Narcotics Act (*Verstoß gegen das Betäubungsmittelgesetz*). That evening the applicant was arrested.

10. In the morning of 7 April 1993 the applicant was questioned by the Berlin police authorities. In the course of this questioning, he was informed that, following the statements made by witness K., there was a strong suspicion that in 1991 he had kept 22 kg of cocaine for a Mr A.C., that he had aided and abetted the drug-trafficking offences committed by the latter and that he had sold 40g of cocaine to the witness Mr K. The applicant thereupon explained how he had met Mr A.C. and that he had known about his involvement in drug-trafficking. He also made statements on the involvement of third persons in drug-trafficking. He denied the accusations made by the witness Mr K.

11. Still on 7 April 1993 he was brought before a detention judge (*Haftrichter*) at the Berlin-Tiergarten District Court (*Amtsgericht*) who, after hearing the applicant, issued a warrant for his arrest (*Haftbefehl*).

12. The arrest warrant stated that the applicant was suspected of having, as a dealer, received in 1991 several deliveries of cocaine (a total of 6 kg) from a Mr A.C., against whom separate criminal proceedings were pending; of having received further deliveries (a total of 16 kg) between 16 and

18 December 1991; and of having sold in 1991, for a price of 3,000 Deutschmarks, two lots of cocaine to Mr K. The arrest warrant indicated that the applicant was suspected on the basis of the statements made by Mr K., who had previously been convicted of drug-trafficking and was being prosecuted in separate proceedings in respect of new offences. The applicant was orally informed of the content of the arrest warrant.

13. On 8 April 1993 the applicant's defence counsel applied to the Berlin Public Prosecutor's Office (*Staatsanwaltschaft*) for access to the criminal files. The Prosecutor's Office supplied the defence counsel copies of the applicant's statements to the police authorities and the detention judge, of the record of the search of the applicant's premises, as well as of the arrest warrant. As regards the other documents contained in the files, counsel's request was dismissed, pursuant to Article 147 § 2 of the Code of Criminal Procedure (*Strafprozeßordnung*), on the ground that such consultation would endanger the purpose of the on-going investigations.

14. Subsequently the applicant chose Mr Zieger as his new defence counsel and he repeated the request on 4 May 1993. He also applied for a review of the applicant's detention on remand (*Haftprüfung*). Thereupon, on 13 May 1993 the Public Prosecutor's Office forwarded a copy of the investigation file concerning detention matters, which at that time comprised a single volume, to the Berlin-Tiergarten District Court.

15. On 14 May 1993 the Public Prosecutor's Office again sent copies of the above-mentioned documents and, as regards the other documents of the file, replied that for the time being a full inspection of the file could not be granted, as otherwise the purpose of the investigation proceedings would be jeopardised.

16. On 27 May 1993 the Berlin-Tiergarten District Court, after an oral hearing in the presence of the applicant, his counsel and the Public Prosecutor, ordered the applicant's continued detention on remand. The District Court, having regard to the results of the investigations, especially the statements made by Mr K. who had been further questioned in the meantime, found that there was a strong suspicion that the applicant had committed the offences mentioned in the arrest warrant and was also involved in organised crime relating to drug-trafficking. The Court considered that K's statements were particularly detailed and conclusive. Neither the applicant nor his counsel were given access to the record of K.'s questioning.

17. On 14 June 1993 the Berlin Regional Court (*Landgericht*) dismissed the applicant's appeal (*Beschwerde*) against that decision. The Regional Court, which had a copy of the investigation file at its disposal, observed that it was not competent to decide on the applicant's complaint about the refusal of full access to the files, while confirming that there was a risk of collusion.

18. On 15 July 1993 the Berlin Court of Appeal (*Kammergericht*) dismissed the applicant's further appeal (*weitere Beschwerde*) against the decision of 14 June 1993. According to the Court of Appeal, the oral information provided to the applicant on the statements of witness K. had been sufficient for him to be in a position effectively to defend himself. In so far as the applicant had invoked Article 5 § 4 of the Convention and the Lamy judgment of the European Court of Human Rights, the Court of Appeal considered that the applicant's case was different in that access to the files was not wholly excluded, but only to the extent that legitimate public interests in an effective prosecution of offenders required such measures. The Court of Appeal confirmed the existence of a risk of collusion. The Court of Appeal based its decision on the contents of a copy of the files which had been prepared by the Prosecutor's Office for the purposes of the appeal proceedings and had been sent to the Court on 7 July 1993.

19. On 9 August 1993 the applicant lodged a constitutional complaint (*Verfassungsbeschwerde*) with the Federal Constitutional Court (*Bundesverfassungsgericht*). Furthermore, counsel requested that the incriminating passages of the statements made by witness K. should be read out or otherwise be made known to him by the Public Prosecutor's Office. According to a file note of 12 August 1993, the Public Prosecutor's Office was not prepared to grant full access to the files as the records on the questioning of witness K. contained information on further suspects and other investigation proceedings where arrest or search warrants had not yet been executed.

20. On 13 August 1993 applicant's counsel obtained copies of the records on the questioning of witness K. to the extent that they related to the applicant. Other passages had been blacked out.

21. On 23 August 1993 counsel again requested full access to the files as the copies sent to him were not comprehensible as a consequence of the blacked out passages. Moreover, he requested further investigations. The request for full access to the files was dismissed on 25 August 1993. The requested investigations were carried out.

22. On 13 September 1993 the Public Prosecutor's Office informed applicant's counsel that there were no longer any reasons to refuse full inspection of the files, and the Federal Constitutional Court was also informed of that fact. In view of this development, the Federal Constitutional Court asked the applicant whether he wished to maintain his constitutional complaint. The applicant's reply was affirmative. The applicant's lawyer was granted access to the file on 17 September 1993.

23. On 27 October 1993 the Federal Constitutional Court decided not to entertain the constitutional complaint.

24. On 12 July 1994 the applicant was convicted of aiding and abetting drug-trafficking in respect of the storage of 16 kg and 6 kg of cocaine and

sentenced to four years' imprisonment. The time he had spent in detention on remand was counted towards the sentence. The judgment became final.

II. RELEVANT DOMESTIC LAW

25. Articles 112 et seq. of the Code of Criminal Procedure (*Strafprozeßordnung*) concern the arrest and detention of a person on reasonable suspicion of having committed an offence. According to Article 112 a person may be detained on remand if there is a strong suspicion that he or she has committed a criminal offence and if there is a reason for arrest, such as the risk of absconding or the risk of collusion. Article 116 regulates the suspension of the execution of an arrest warrant.

26. Under Article 117 of the Code of Criminal Procedure, remand prisoners can ask any time for judicial review of the arrest warrant. An oral hearing will be held upon the request of the remand prisoner, or if the court so decides on its own motion (Article 118 § 1). If the arrest warrant is held to be valid following an oral hearing, the remand prisoner is entitled to a new oral hearing only if the detention has lasted for three months altogether and if two months have elapsed since the last oral hearing (Article 118 § 3). Article 120 provides that an arrest warrant has to be quashed if reasons justifying the detention on remand no longer persist or if the continued detention appears disproportionate. Any prolongation of detention on remand beyond an initial six months is to be decided by the Court of Appeal (Articles 121-122).

27. Articles 137 et seq. of the Code of Criminal Procedure concern the defence of a person charged with having committed a criminal offence, in particular the choice of defence counsel or appointment of official defence counsel. According to Article 147 § 1, defence counsel is entitled to consult the files, which have been presented to the trial court, or which would have to be presented to the trial court in case of an indictment, and to inspect the exhibits. Paragraph 2 of this provision allows for a refusal of access to part or all of the files or to the exhibits, for as long as the preliminary investigation has not been terminated, if the purpose of the investigation would otherwise be endangered. Pending the preliminary investigation, it is for the Public Prosecutor's Office to decide whether to grant access to the file or not; thereafter it is for the president of the trial court (Article 147 § 5). By an Act amending the Code of Criminal Procedure (*Strafverfahrensänderungsgesetz*, BGBl. 2000, I, p. 1253) with effect as from 1 November 2000, the latter provision has been amended to the effect, *inter alia*, that an accused who is in detention is now entitled to ask for judicial review of the decision of the Public Prosecutor's Office denying access to the file.

28. Articles 151 et seq. of the Code of Criminal Procedure regulate the principles of criminal prosecution and the preparation of the indictment. Article 151 provides that any trial has to be initiated by an indictment. According to Article 152 the indictment is to be preferred by the Public Prosecutor's Office which is, unless otherwise provided, bound to investigate any criminal offence of which there exist sufficient grounds for suspicion.

29. Preliminary investigations are to be conducted by the Public Prosecutor's Office according to Articles 160 and 161 of the Code of Criminal Procedure. On the basis of these investigations the Public Prosecutor's Office decides under Section 170 whether to prefer an indictment or to discontinue the proceedings.

30. According to Article 103 (1) of the German Constitution (*Grundgesetz*), every person involved in proceedings before a court is entitled to be heard by that court (*Anspruch auf rechtliches Gehör*).

According to the Federal Constitutional Court (*Bundesverfassungsgericht*), this rule requires a court decision to be based only on those facts and evidential findings which could be commented upon by the parties. In cases involving arrest and detention on remand, the arrest warrant and all court decisions upholding it must be founded only on those facts and pieces of evidence of which the accused was previously aware and on which he was able to comment (Federal Constitutional Court, decision of 11 July 1994 (NJW 1994, 3219), with further references).

In the aforementioned decision, the Federal Constitutional Court held that, following his arrest, an accused had to be informed of the content of the arrest warrant and promptly brought before a judge who, when questioning him, had to inform him of all relevant incriminating evidence as well as of evidence in his favour. Moreover, in the course of ensuing review proceedings, the accused must be heard and, to the extent that the investigation will not be prejudiced, the relevant results of the investigation at that stage must be put to him. In some cases, such oral information may not be sufficient. If the facts and the evidence forming the basis of a decision in detention matters cannot or can no longer be communicated orally, other means of informing the accused, such as a right to consult the files (*Akteneinsicht*), are to be used. On the other hand, statutory limitations on an accused's access to the files pending the preliminary investigation are to be accepted, if the efficient conduct of criminal investigations so requires. However, even pending those investigations, an accused who is detained on remand has a right of access to the files through his lawyer if and to the extent that the information which they contain might affect his position in the review proceedings and that oral information is not sufficient. If in such cases the prosecution refuses access to the relevant parts of the files pursuant to Article 147 § 2 of the Code of Criminal Procedure, the reviewing court cannot base its decision on those facts and evidence and, if

necessary, has to set the arrest warrant aside (Federal Constitutional Court, loc. cit.).

PROCEEDINGS BEFORE THE COMMISSION

31. Mr Garcia Alva applied to the Commission on 4 January 1994. He complained under Article 5 § 4 of the Convention that he had been denied access to the investigation file in connection with the judicial review of his detention on remand. He further submitted that, in breach of Article 5 § 2, he had not been informed promptly of the charges against him. Finally he complained of the conditions of his detention.

32. On 10 April 1997 the Commission declared admissible the complaint under Article 5 § 4 and the remainder of the application (no. 23541/94) inadmissible. In its report of 17 September 1998 (former Article 31 of the Convention), it expressed the view, by 27 votes to 5, that there had been a violation of Article 5 § 4.

FINAL SUBMISSIONS TO THE COURT

33. In their written submissions, the Government applied for a finding that the Federal Republic of Germany had not violated its obligations under the Convention.

34. The applicant requested the Court to hold that his rights pursuant to Article 5 § 4 of the Convention had been violated and to award him compensation for non-pecuniary damage and for legal costs and expenses under Article 41 of the Convention.

THE LAW

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

35. The applicant complained about the proceedings for the review of his detention on remand. He invoked Article 5 § 4 of the Convention, which reads as follows:

> "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. Arguments before the Court

36. The applicant stated that the review proceedings were not truly adversarial. He submitted that the arrest warrant mainly referred to the statements made by another suspect, Mr K., as the basis for the suspicion against him. In his view, the summary information on the charges against him and the file material made available to his counsel did not provide a sufficient basis on which to secure his defence. Without full access to the files and knowledge of the complete text of the said statements, his counsel had not been able to put the credibility of Mr K. in doubt and to defend him against the suspicion of drug-trafficking.

37. According to the Government, Article 5 § 4 did not provide a general right for a person detained on remand or his counsel to inspect the files concerning the investigations against him. What matters was to ensure that the person concerned was in a position to effectively exercise his rights and this could be done by different means.

In the present case, the applicant and his defence counsel were fully informed, by what had been put to the applicant during the questioning and by the arrest warrant, of the charges and of the times and places at which offences were said to have been committed, to the extent that there was any knowledge of them at that stage. Moreover, from what had been put to the applicant they also knew the basic substance of those parts of K.'s statements of 17 and 30 March 1993 which incriminated the applicant and formed the basis of the arrest warrant of 7 April 1993. In addition, copies of both the arrest warrant and the record of the applicant's statements had already been given to the applicant's first defence counsel in April 1993 (see paragraph 13 above). The charges were also not of such complexity as to require more than an oral communication of the facts and underlying evidence.

As regards the denial of access to the investigation files, it was to be explained by the fact that the investigations against the applicant formed part of a complex set of proceedings concerning several accused in Colombian mafia circles. Particularly in a case like the present one, where a risk of destruction of evidence is presumed, there must be a possibility to deny access to the investigation files to the accused or his counsel, in order to prevent them from influencing other witnesses. The investigation files on the applicant contained references both to investigations measures that had still to be carried out in his case as well as in parallel cases against other accused.

38. In substance, the Commission shared the applicant's view. It considered that given the importance in the review proceedings of the statements by K., the applicant or his counsel should have been given an opportunity to read them in full, in order to be able to properly challenge them.

B. The Court's assessment

39. The Court recalls that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine "not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention".

A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among other authorities, the Lamy v. Belgium judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29 and the *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

These requirements are derived from the right to an adversarial trial as laid down in Article 6 of the Convention, which means, in a criminal case, that both the prosecution and the defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. According to the Court's case-law, it follows from the wording of Article 6 – and particularly from the autonomous meaning to be given to the notion of "criminal charge" – that this provision has some application to pre-trial proceedings (see the Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, p. 13, § 36). It thus follows that, in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an on-going investigation, the basic requirements of a fair trial, such as the right to an adversarial procedure. While national law may satisfy this requirement in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see, *mutatis mutandis*, the Brandstetter v. Austria judgment of 28 August 1991, Series A no. 211, p. 27, § 67).

40. In the present case, the applicant was, upon his arrest, informed in general terms of the grounds for suspicion and of the evidence against him, as well as of the grounds for his detention. Upon counsel's request, copies of the applicant's statements to the police authorities and the detention judge, of the record of the search of the applicant's premises, as well as of the arrest warrant against him were made available to the defence, but at

that stage, the Public Prosecutor's Office dismissed counsel's request for consultation of the investigation files, and in particular of the depositions made by Mr K., on the ground that consultation of these documents would endanger the purpose of the investigations.

The Berlin-Tiergarten District Court, for its part, reached its conclusion that there was a strong suspicion that the applicant had committed the offences in question on the basis of the contents of the investigation file – including, to a large extent, Mr K.'s statements – and the parties' submissions. In June and July 1993 the applicant's respective appeals were dismissed by the Berlin Regional Court and the Berlin Court of Appeal, which also had a copy of the files at their disposal.

41. The contents of the investigation file, and in particular the statements of Mr K. thus appear to have played a key role in the District Court's decision to prolong the applicant's detention on remand. However, while the Public Prosecutor and the District Court were familiar with them, their precise content had not at that stage been brought to the applicant's or his counsel's knowledge. As a consequence, neither of them had an opportunity adequately to challenge the findings referred to by the Public Prosecutor and the District Court, notably by questioning the reliability or conclusiveness of the statements made by Mr K., who had a previous conviction and was the subject of another set of investigations for drug-trafficking.

It is true that, as the Government point out, the arrest warrant gave some details about the facts grounding the suspicion against the applicant. However the information provided in this way was only an account of the facts as construed by the District Court on the basis of all the information made available to it by the Public Prosecutor's Office. In the Court's opinion, it is hardly possible for an accused to challenge the reliability of such an account properly without being made aware of the evidence on which it is based. This requires that the accused be given a sufficient opportunity to take cognisance of statements and other pieces of evidence underlying them, such as the results of the police and other investigations, irrespective of whether the accused is able to provide any indication as to the relevance for his defence of the pieces of evidence which he seeks to be given access to.

42. The Court is aware that the Public Prosecutor denied the requested access to the file documents on the basis of Article 147 § 2 of the Code of Criminal Procedure, arguing that to act otherwise would entail the risk of compromising the success of the on-going investigations, which were said to be very complex and to involve a large number of other suspects (see paragraphs 13 and 19 above).

The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However,

this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer.

43. In these circumstances, and given the importance in the Berlin Courts' reasoning of the contents of the investigation file, and in particular of the statements made by Mr K., which could not be adequately challenged by the applicant, since they were not communicated to him, the procedure before the said courts, which reviewed the lawfulness of the applicant's detention on remand, did not comply with the guarantees afforded by Article 5 § 4. This provision has therefore been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Under Article 41 of the Convention,

> "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. Non-pecuniary damage

45. The applicant claimed 25,440 Deutschmarks (DEM) for non-pecuniary damage, being 160 DEM for each of the 159 days of detention during which he was denied access to the investigation files.

46. The Government did not comment on this issue.

47. The Court recalls that it is impossible to determine whether or not the applicant's arrest warrant would have been set aside by one of the Berlin courts involved if there had been no violation of Article 5 § 4. As to the alleged frustration suffered by the applicant on account of the absence of adequate procedural guarantees during his detention, the Court finds that in the particular circumstances of the case the finding of a violation is sufficient (see the Nikolova judgment cited above, p. 226, § 76).

B. Costs and expenses

48. In addition, the applicant claimed 1,969.02 DEM in respect of the costs and expenses relating to his legal representation before the domestic courts and the European Court of Human Rights.

49. The Government did not comment on this issue.

50. As regards the costs and expenses sustained by the applicant in respect of his legal representation, the Court, making an assessment on an equitable basis, awards the applicant 2,000 DEM.

C. Default interest

51. According to the information available to the Court, the statutory rate of interest applicable in Germany at the date of adoption of the present judgment is 8.42% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, 2,000 (two thousand) Deutschmarks for costs and expenses, together with any value-added tax that may be chargeable;
   (b) that simple interest at an annual rate of 8.42% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and notified in writing on 13 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President