

Resolution CM/ResDH(2011)87¹

Execution of the judgment of the European Court of Human Rights Vidal Escoll and Guillán González against Andorra

(Application No. 38196/05, judgment of 29/07/2008, final on 26/01/2009)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the judgment transmitted by the Court to the Committee once it had become final;

Recalling that the violation of the Convention found by the Court in this case concerns a breach of the applicants’ right to a fair trial in that that could not obtain enforcement of a judgment given in their favour by the High Court of Justice in 2003 (violation of Article 6, paragraph 1) (see details in Appendix);

Having invited the government of the respondent state to inform the Committee of the measures taken to comply with its obligation under Article 46, paragraph 1, of the Convention to abide by the judgment;

Having examined the information provided by the government in accordance with the Committee’s Rules for the application of Article 46, paragraph 2, of the Convention;

Having satisfied itself that, within the time-limit set, the respondent state paid the applicants the just satisfaction provided in the judgment (see details in Appendix),

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded by the Court in its judgments, the adoption by the respondent state, where appropriate:

- of individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

DECLARES, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and

DECIDES to close the examination of this case.

¹ Adopted by the Committee of Ministers on 14 September 2011 at the 1120th Meeting of the Ministers’ Deputies

Appendix to Resolution CM/ResDH(2011)87

Information about the measures to comply with the judgment in the case of Vidal Escoll and Guillán González against Andorra

Introductory case summary

This case concerns the impossibility for the applicants to obtain enforcement of a judgment given in their favour by the High Court of Justice in May 2003.

In 1999, the applicants, on the grounds of illegality of the building permits for two blocks of flats being built opposite and beside where they lived, brought an action to have the permits annulled before the administrative section of the court of *batlles*. In a judgment of 28/05/2003, the High Court of Justice ruled in favour of the applicants and ordered the demolition of the parts of the two buildings exceeding the maximum authorised height.

However, in 2004, the General Council authorised a plan to expropriate part of the property of each applicant on town-planning grounds. The Constitutional Court, seised of an *empara* appeal by the applicants, held in a judgment of April 2005 that these expropriations would result in transforming the applicants' rights to obtain the demolition of the disputed parts of the buildings into an entitlement to compensation and would thus render their application for enforcement of the 28/05/2003 judgment pointless.

The European Court noted that after 28 May 2003 the municipality should have taken the necessary measures to comply with the court's decision. But the judicial decisions in the applicants' favour had been deprived of all effect by the subsequent regularisation of the situation of the illegally built blocks through the expropriation of part of each applicant's property. In addition, the Court considered that the decision to expropriate the applicants' property could not be regarded as an exceptional situation justifying failure to execute a final judgment. It further noted that the Andorran Government had not established that the applicants had been granted the compensation they were intended to receive (violation of Article 6§1).

I. Payment of just satisfaction and individual measures

a) Details of just satisfaction

Pecuniary and non-pecuniary damage	Costs and expenses	Total
80 000 EUR	20 000 EUR	100 000 EUR
Paid on 17/04/2009		

b) Individual measures

Under Article 41 of the Convention, the applicants asked for the enforcement of the judgment delivered by the High Court of Justice in May 2003 or alternatively compensation for the pecuniary and non-pecuniary damages they sustained because of the failure to enforce the judgment. The European Court awarded the applicants an amount of just satisfaction in respect of all damages.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

II. General measures

The Andorran authorities stated that the violation found in this case was of an isolated character and indicated that, with a view to preventing new, similar violations, the European Court's judgment had been published on the *Official Bulletin of the Principality of Andorra* on 29/04/2009.

III. Conclusions of the respondent state

The government considers that no individual measure is required apart from the payment of the just satisfaction, that the general measures adopted will prevent similar violations and that Andorra has thus complied with its obligations under Article 46, paragraph 1 of the Convention.