

## VIDAL ESCOLL and GUILLÁN GONZÁLEZ v. ANDORRA

Right to a fair trial – violation

Article 6, Section 1

Failure of authorities to execute judgment against illegally constructed buildings.

In a judgment delivered on 12 March 2008 in the case of *Vidal Escoll and Guillán González v. Andorra*, the European Court of Human Rights held unanimously that there had been a violation of the applicants' rights under Article 6, Section 1 (right to a fair trial) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each of the applicants EUR 40,000 in respect of pecuniary and non-pecuniary damage and EUR 10,000 for costs and expenses.

This judgment became final on 26 January 2009 in accordance with Article 44, Section 2(c) of the Convention, when the panel of the Grand Chamber rejected the request to refer the case under Article 43.

### 1. Principal facts

The applicants are Josep Vidal, an Andorran national, and José Guillán González, a Spanish national. They were born in 1942 and 1944 respectively and live in Escaldes-Engordany (Andorra).

The applicants own two houses on a housing estate in the municipality of Escaldes-Engordany. They asked the Andorran courts to set aside the planning permission which the municipality of Escaldes-Engordany had granted to a company in respect of plans to build two blocks of flats near their homes on the ground of illegality. The High Court of Justice gave judgment in their favour on 28 May 2003. They made several applications to the courts to obtain execution of the judgment, and in particular the demolition of the parts of the buildings above the maximum authorised height. In December 2004 the Constitutional Court ordered the execution of the judgment, but this had no effect. In concurrent proceedings the municipality sought to expropriate part of the property of each applicant as part of a plan to widen the estate's access road. Considering that these proceedings were exclusively aimed at preventing execution of the judgment of 28 May 2003, the applicants applied to the Constitutional Court, which in

April 2005 found that the applicants' right to have the illegally built parts of the relevant blocks demolished had become a right to compensation.

## **2. Procedure of the Court**

The application was lodged on 19 October 2005 with the European Court of Human Rights. On 27 October 2006 the Court decided to examine the merits of the application at the same time as its admissibility. On 1 February 2008 the case was assigned to the Third Section.

## **3. Summary of the Judgment**

### **Complaints**

Relying on Article 6, Section 1 (right to a fair trial) of the Convention, the applicants complained of the impossibility of obtaining execution of the judgment in their favour, criticising both the passivity of the domestic authorities concerning compliance and the expropriation proceedings brought with a view to preventing execution.

### **Decision of the Court**

#### *Article 6, Section 1 of the Convention*

The 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.

The Court accordingly held unanimously that there had been a violation of Article 6, Section 1.

#### *Article 41 of the Convention*

Under Article 41 (just satisfaction) of the Convention, the Court awarded each of the applicants EUR 40,000 in respect of pecuniary and non-pecuniary damage and EUR 10,000 for costs and expenses.

*Judgment was given by a Chamber of seven judges, composed as follows:*

Elisabet Fura-Sandström (Swedish), President, Corneliu Bîrsan (Romanian), Boštjan M. Zupančič (Slovenian), Alvina Gyulumyan (Armenian), Egbert Myjer (Dutch), Judges, Isabelle Berro-Lefèvre (Monegasque), *ad hoc* Judge, Luis López Guerra (Spain), Judge.