



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Report on follow-up to communications Nos. 2/2014 and 5/2015 against Spain**

Communication No. 2/2014, I.D.G. v. Spain

Views adopted:

17 June 2015

Contents of initial communication:

The home of the author of the communication was the subject of mortgage enforcement proceedings. However, the author was not personally notified of the decision to admit the enforcement proceedings; a system of notification by public posting of notice was used instead. The author claims that she was not apprised of the notification and was therefore unable to come forward in person and mount a defence against the foreclosure application. The author considers that use of the notification by public posting system in her case constituted a violation of her rights under article 11 of the Covenant (E/C.12/55/D/2/2014).

Article violated:

Article 11 of the Covenant

Committee's recommendations in respect of the author:

(a) Ensure that the auction of the author's property does not proceed unless she is guaranteed due procedural protection and due process, in accordance with the provisions of the Covenant and taking into account the Committee's general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on the right to adequate housing: forced evictions;

(b) Reimburse the author for the legal costs incurred in the processing of this communication.

General recommendations by the Committee:

(a) Ensure the accessibility of legal remedies for persons facing mortgage enforcement proceedings for failure to repay loans;

(b) Adopt appropriate legislative or administrative measures to ensure that notification by public posting of notice in mortgage enforcement proceedings is strictly limited to situations in which all means of serving notice in person have been exhausted, ensuring sufficient publicity and long enough notice for the affected person to have the opportunity to take full cognizance of the start of the

* Reissued for technical reasons on 2 January 2020.

** Adopted by the Committee at its sixty-sixth session (30 September–18 October 2019).



proceedings and to be able to attend;

(c) Adopt appropriate legislative measures to ensure that the mortgage enforcement procedure and the procedural rules establish appropriate requirements ... and procedures to be followed before going ahead with the auction of a dwelling or with an eviction, in accordance with the Covenant and taking into account the Committee's general comment No. 7.

Submission from the State party:

By notes verbales dated 11 March 2016 and 8 February 2018, the State party submitted its response to the Committee's recommendations.

With regard to the recommendations in respect of the author, the State party advises that, prior to the publication of the Committee's Views, the author petitioned the Court for suspension of the auction procedure, citing the invalidity of certain clauses in the mortgage loan contract, and that, on 4 October 2013, the Court partially accepted this petition, finding clause 6 of the contract ("default interest") invalid. Furthermore, through the successive notifications served over the course of the proceedings, all means available prior to notification by public posting had been exhausted, including the use of other addresses provided by the complainant. On 21 October 2016, the foreclosing lender was summoned to appear, at risk of a provisional suspension of proceedings. There was no response to the summons and, as a result, according to the State party, the proceedings have been stayed on a provisional basis.

With regard to the general recommendations relating to the need to limit the use of notification by public posting of notice, the State party points out that articles 164 et seq. of the Civil Procedure Act, as amended on 5 October 2015, set out a comprehensive procedure for serving notice in person that must be exhausted prior to resorting to notification by public posting. The procedure provides for the possibility of serving notice at the intended recipient's place of work, making inquiries about his or her address if it has changed and, if so, serving notice at the new address, and issuing the notice to employees, relatives or persons with whom the intended recipient lives, or with the concierge of the building, if applicable, reminding the intermediary of his or her obligation to pass on the document to the intended recipient.

Comments by the author:

On 26 March 2018, the author submitted her comments on the State party's observations. She is of the view that the State party has not implemented any of the Committee's recommendations.

She points out that she has still not, even now, been notified of the foreclosure application and that she was therefore unable to take cognizance of the proceedings from the outset. Moreover, in the appeal that preceded the Court's ruling of 4 October 2013, she was allowed to put forward only her allegations about the abusive nature of the clauses in the mortgage loan contract; she was not allowed to present her full defence.

The author asserts that, in April 2016, her legal representatives filed with the Ministry of Justice a claim for reimbursement of legal fees in the amount of €49,600,

which has not been answered. On 6 July 2016, they filed an administrative suit against the Ministry of Justice on account of its inactivity. The author has attached the allegations put forward by the State Legal Service in opposition to her claim, in which it argues that: it is the author, and not her legal representatives, who should request reimbursement of fees; that the Committee's decisions are not directly enforceable; and that there is no evidence of legal costs, since it has not been proven that the author actually paid any fees.

With regard to the general recommendations, the author considers that no measures have been taken to ensure the accessibility of legal remedies or to limit the use of notification by public posting since, despite the amendment to article 164 of the Civil Procedure Act, the article that was applied in her case, namely article 686, has not been amended. The author considers that the wording of the legislation is inadequate, resulting in a deficient notification system. She is of the view that access to the right to decent housing in Spain remains a cause for concern.

Committee's decision:

The Committee notes that the author claims that she has still not been notified of the foreclosure application and that the Committee's recommendation has therefore not been implemented. The Committee recalls that it recommended that the State party should ensure that the auction of the author's property did not proceed unless she was guaranteed due procedural protection and due process. In this regard, the Committee notes that, according to the information received, to date no auction has taken place and the author has not been evicted, and that, according to the State party, the foreclosure proceedings have been, or soon will be, suspended on a provisional basis.

The Committee notes that the State party has amended its legislation to limit the use of notification by public posting when serving notice of procedural decisions to interested parties. It also notes that, in the author's case, notification by public posting has only been used on one occasion. Although, as the author notes, only article 164 of the Civil Procedure Act has been amended and article 686 remains unchanged, the Committee also recalls that it was not a shortcoming in the wording of article 686 that caused the violation of the author's right to adequate housing but a shortcoming in its application (E/C.12/55/D/2/2014, para. 13.3).

The Committee notes that the author's representatives have claimed €49,600 from the State party, a claim that, according to information received by the Committee, is still pending settlement. The Committee notes that, according to the documentation provided, the representatives have requested payment of an invoice in a substantial amount without it being proven that the author actually incurred these expenses. The Committee stresses that the parties are justified in seeking the implementation of the Committee's recommendations, in good faith and in a reasonable manner at all times. Accordingly, the Committee requests the parties to provide additional information on the outcome of these proceedings, and asks the author to take part in the proceedings in a reasonable manner and in good faith.

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In the light of all the information received, the Committee considers that the recommendations in respect of the author have been partially implemented and that the general recommendations have been satisfactorily implemented. The Committee decides to continue the follow-up procedure for the communication and invites the State party to provide information on the measures taken to implement recommendation (b) in respect of the author within 90 days of the publication of the present document.

Communication No. 5/2015, Mohamed Ben Djazia and Naouel Bellili v. Spain

Views adopted:

20 June 2017

Contents of initial communication:

The authors were evicted for failure to pay the rent for their home, a rented room in an apartment in Madrid. In the authors' view, the eviction constituted a violation of article 11 (1) of the Covenant. They also claimed that the judicial proceedings had not observed all guarantees, since the courts had not evaluated the impact of the eviction (E/C.12/61/D/5/2015).

Articles violated:

Article 11 (1), read separately and in conjunction with articles 2 (1) and 10 (1) of the Covenant.

Committee's recommendations in respect of the authors:

- (a) In the event that the authors do not have adequate accommodation, assess their current situation and, following genuine consultation with them, grant them public housing or any other measure enabling them to enjoy adequate accommodation, taking into account the criteria established in these Views;
- (b) Award the authors financial compensation for the violations suffered;
- (c) Reimburse the authors for legal costs reasonably incurred in the processing of this communication.

General recommendations by the Committee:

- (a) Adopt appropriate legislative and/or administrative measures to ensure that in judicial proceedings in relation to the eviction of tenants, defendants are able to object or lodge an appeal so that the judge might consider the consequences of eviction and its compatibility with the Covenant;
- (b) Adopt the necessary measures to resolve the lack of coordination between court decisions and the actions of social services which can result in an evicted person being left without adequate accommodation;
- (c) Take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only following genuine consultation with the persons concerned and once the State has taken all essential steps, to the maximum of available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children and/or other persons in vulnerable situations;
- (d) Develop and implement, in coordination with the autonomous communities, to the maximum of available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with

general comment No. 4 (1991) on the right to adequate housing. This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable and measurable manner.

Submission from the State party:

By note verbale dated 11 January 2018, the State party submitted its response to the Committee's recommendations.

With regard to the recommendations in respect of the authors, the State party reports that steps have been taken to enable the authors to apply for public housing through open allocation procedures, since their case file has been closed since 26 September 2016.

The State party also reports that the Committee's Views have been published in the Bulletin of the Ministry of Justice.

With regard to the recommendation to adopt a comprehensive plan to guarantee the right to adequate housing for low-income persons, the State party refers to its response to the allegations of the Special Rapporteur on adequate housing detailed in paragraph 10 of the Views.

Comments by the author:

On 1 March 2018, the authors submitted their comments on the State party's observations.

The authors report that since 2016 they have been living in a social housing unit allocated to them by the city of Madrid. The authors state that they have not been offered financial reparations or compensation for court costs and that there are no internal mechanisms for claiming this redress.

The authors are of the opinion that the Views should have been published in the Official Gazette (*Boletín Oficial del Estado*), which is the general public information point for legal developments in Spain, and not in the Bulletin of the Ministry of Justice, which is less widely distributed and is primarily for officials of that State department.

With regard to the recommendation to take measures so that judges might consider the consequences of evictions, the authors report that there is still no such option provided for under current legislation. According to the authors, this recommendation could only be implemented by amending the Civil Procedure Act. The authors also note that, in cases of eviction for non-payment of rent, the process moves very quickly, with defendants given only three days to request free legal assistance, and that, if the defendant does not respond within 10 days, a judicial official can order their eviction.

The authors explain that the Autonomous Community of Catalonia is the only region that has introduced a protocol for coordinating the actions of the different administrations and ensuring that social services receive prior notification about evictions from the courts with a view to guaranteeing an effective response. However, despite the existence of this protocol, social services only intervened in 564 of the 3,024 evictions for non-payment of rent carried out in Barcelona in 2016. No equivalent protocols have been put in place in the other autonomous communities.

The authors consider that the recommendation to implement a measurable plan to guarantee the right to housing has been partially implemented through the housing laws adopted in some of the autonomous communities. However, the application of these laws has been suspended following constitutional challenges brought by the central Government.

Third-party interventions:

On 14 March 2018, the International Network for Economic, Social and Cultural Rights (ESCR-Net) issued its comments on the follow-up to the general recommendations contained in the Views. ESCR-Net considers that there is no security of tenure in Spain, since landlords can refuse to renew rental agreements without giving an explanation. Moreover, unlike in other jurisdictions, judges cannot examine the consequences of evictions on the basis of the principles of reasonableness and proportionality. It also notes that, although municipal and regional protocols have been put in place to guarantee coordination with social services in eviction cases, these are not consistently adhered to and the authorities are not legally obliged to provide alternative housing.

With regard to the recommendation to implement a housing plan, the organization notes that there were 300,000 applicants for social housing in Spain in 2013, at the same time as there were 3.4 million empty houses, including 9,752 social housing units in habitable condition. Today, social housing accounts for 1 per cent of total housing in Spain, compared with 32 per cent in the Netherlands, 23 per cent in Austria and 18 per cent in the United Kingdom of Great Britain and Northern Ireland. Since 2009, spending on housing has been cut by 50 per cent. Meanwhile, house prices have risen significantly over the last decade. The proportion of the population that have to spend more than 40 per cent of their income on housing has risen from 5 per cent to 10.3 per cent. The State party has adopted a new State Housing Plan 2018–2021; however, in order to meet the current level of demand, this plan will require greater investment and more social housing. ESCR-Net recommends that the State party should increase its tax revenues, collect disaggregated data on the housing needs of the population and the impact of its existing policies, and implement a human rights-based housing strategy.

On 17 April and 24 July 2018, the Ombudsman submitted written comments on the implementation of the recommendations. The Ombudsman considers the State party's reply to the Committee to be inadequate, since it does not address all the recommendations and, when it does refer to them, it does so either only briefly or in relation to allegations made prior to the Committee's consideration of the case. Moreover, the Ombudsman notes that it has

consulted the Bulletin of the Ministry of Justice but has not found any mention of the Views and that, in any case, the Official Gazette is the place where Views should be published. The Ombudsman also provides information on the outcome of its dialogues with relevant ministries. According to the State Secretariat for Infrastructure, Transport and Housing, all housing responsibilities pertain exclusively to the autonomous communities, which have been given the economic resources required to implement the State Housing Plan 2018–2021. The Ombudsman is of the view that the Secretariat should collect the necessary information from the autonomous communities. For its part, the Ministry of Justice states that, if the authors had advised that they had been granted social housing in 2016, there could have been grounds for discontinuing the communication. It also stresses the non-binding nature of the Committee's recommendations, as set out under article 9 (2) of the Optional Protocol, which is why no information was provided on action taken in the light of the recommendations on financial compensation and reimbursement of costs, to which the State party is only required to give "due consideration". Without entering into the merits of the case, the Ombudsman considers that the obligations assumed under the Optional Protocol call for, as a minimum, an analysis of the recommendations and a reasoned and grounded response to each of them. The Ombudsman suggests that the Committee's recommendations should be reconsidered, with reasons given for each reply, and that the Views should be published in the Official Gazette. On 23 September 2019 the Ombudsman submitted further information to the effect that, on 3 April 2019, parliament had adopted Decree No. 7/2019, which establishes a new remedy for persons subject to an eviction order, who may now request social services to evaluate their vulnerability. The Ombudsman further states that the Committee's Views are now available in the Bulletin of the Ministry of Justice and that it considers the recommendation to publish the Views to have been fully implemented.¹

Second submission from the State party: By note verbale dated 26 February 2019, the State party advises that, following a meeting attended by all bodies and institutions competent to respond to individual communications on the right to housing submitted to the Committee, it has been established as good practice that a mechanism for communication between municipal councils and courts should be created to ensure that the former can issue notifications about eviction proceedings without delay. It was also agreed that a protocol to expedite the implementation of the precautionary measures proposed by the Committee would be implemented. An interministerial working group has also been set up to develop urgent measures in the areas of housing and rented housing, and a human rights division has been created within the Ministry for Foreign Affairs, the European Union and Cooperation to ensure greater compliance with the recommendations and Views issued by international forums.

¹ The State party and the authors of the communication have not yet been able to give their comments on this document.

Committee's decision:

The Committee notes that the authors of the communication now have adequate accommodation. The Committee also notes the authors' claim that they have not yet received any financial compensation and have not been reimbursed for the legal costs incurred in the processing of the communication. This claim has not been challenged by the State party.

The Committee therefore finds that satisfactory action has been taken in respect of its recommendations in relation to the authors but that as yet no response has been received and no satisfactory action has been taken in relation to recommendations (b) and (c).

The Committee notes that, according to the authors, judicial procedure still does not allow judges to consider the consequences of eviction. The Committee takes note of the information submitted by the Ombudsman in that regard, on which the parties have not yet commented, and decides to await further information from the State party and the authors on the adoption of Decree No. 7/2019.

The Committee notes that the State party has established as good practice that a mechanism for communication between municipal councils and courts should be created to ensure that the former can issue notifications about eviction proceedings without delay. The authors and third parties claim that, as it stands at present, this protocol is inadequate. The Committee awaits further information on the impact of this good practice.

The Committee notes that the State party has indicated that the Views were published in the Bulletin of the Ministry of Justice and that the authors and third parties consider that the Official Gazette would be the appropriate place to publish them.

On the basis of all the information received, the Committee considers that some initial action has been taken but that further action and additional information on the measures taken are still needed. The Committee decides to continue the follow-up procedure for the communication and invites the State party to provide information on the measures taken in the light of recommendations (b) and (c) in respect of the authors and general recommendations (a), (b), (c) and (d) within 90 days of the publication of the present document.
