

**Economic and Social Council**

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**Committee on Economic, Social and Cultural Rights****Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 45/2018\***

<i>Communication submitted by:</i>	A.M.O. and J.M.U.
<i>Alleged victims:</i>	The authors and their three minor children
<i>State party:</i>	Spain
<i>Date of communication:</i>	15 June 2018
<i>Date of adoption of decision:</i>	13 October 2020
<i>Subject matter:</i>	Eviction due to occupation without legal title
<i>Procedural issue:</i>	Lack of substantiation
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	2, 5

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\* Adopted by the Committee at its sixty-eighth session (28 September–16 October 2020).



1.1 The authors of the communication are A.M.O., a Romanian citizen born on 20 November 1987, and J.M.U., a Spanish citizen born on 12 September 1965. They are acting on behalf of themselves and their three minor children, J.M.O., born on 3 June 2007, A.M.O., born on 5 March 2009, and A.M.O., born on 9 September 2015. The authors claim that they are victims of a violation of their rights under article 11 (1) of the Covenant because, despite not having alternative housing, they are subject to an eviction order in respect of the property they have been occupying since 2015. The Optional Protocol entered into force for the State party on 5 May 2013. The authors are not represented by counsel.

1.2 On 10 July 2018, the Committee, acting through its working group on communications, registered the communication. Noting the authors' claim that they did not have alternative housing and that being evicted would therefore cause them irreparable harm, the Committee requested the State party to take interim measures in the form of either the suspension of the eviction while the communication is considered or the provision of adequate alternative housing for the authors, in genuine consultation with them.

1.3 On 18 July 2019, in the light of the changes in the authors' financial situation, the Committee, through its working group on communications, agreed to the request to lift the interim measures.

1.4 In the present decision, the Committee summarizes the information and the arguments submitted by the parties; it then considers the admissibility of the communication; and, lastly, it draws its conclusions.

## **A. Summary of the information and arguments submitted by the parties**

### **Factual background**

2.1 Until 4 April 2015, the family lived in a property owned by J.M.U.'s parents in Calle San Felipe in Oliva, Valencia. On that date, the property burned down. Faced with having to live on the streets, given that they did not have employment contracts or a guarantor and that their income from collecting scrap metal was too low to enable them to rent a property, the authors decided to occupy an empty apartment in Calle Santa Bárbara in Oliva.

2.2 The empty property they decided to occupy has belonged to a bank since 4 December 2012, when it was the subject of foreclosure proceedings against its former owners before Court of First Instance No. 4 in Gandía. The former owners had had to leave the property. After the authors moved into it in 2015, they began to receive eviction orders issued with the intention of returning the property to the bank.

2.3 On 24 March 2017, the bank was unable to take possession of the property because the authors were living in it.

2.4 On 26 July 2017, the authors requested that the bank allow them to pay social rent.<sup>1</sup> Despite the fact that the Department of Social Services supported the authors' request, the bank did not accede to it.

2.5 Another eviction was scheduled for 2 June 2017, but was postponed as the authors had not been notified.

2.6 On 18 October 2017, the authors requested alternative housing from the autonomous regional government of Valencia (Generalitat de Valencia), but have not yet received a favourable response.

2.7 Faced with a new eviction date of 23 October 2017, the authors filed an appeal. At a hearing on 3 November 2017, the Court confirmed that the property would be handed over to the bank.

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<sup>1</sup> The request was based on the code of good practices for the viable restructuring of debts secured by a mortgage on a principal residence, approved by the Royal Decree-Law of 9 March 2012 and amended by Royal Decree-Law No. 5/2017; the authors fall into the category of particularly vulnerable persons.

2.8 On 6 November 2017, the Court ordered the eviction to take place on 5 February 2018, but it was not carried out because of the authors' appeal.

2.9 On 27 April 2018, the Court ordered the Judicial Commission to provide assistance with the fifth attempt to evict the authors, scheduled for 13 July 2018, and requested the involvement of the social services because some of the family members to be evicted were minors.

2.10 On 30 May 2018, the authors appealed against the eviction order, requesting that it be suspended until they obtained decent and adequate housing. The authors also requested the Court to conduct a proportionality test setting the lack of any urgent need for the bank to take back possession of the property against the family's housing emergency. The authors recalled their extreme economic and social vulnerability, invoked international standards on the right to adequate housing and on the prohibition of forced evictions,<sup>2</sup> and argued that under the prevailing market conditions, vulnerable population groups were not guaranteed access to housing. In the appeal, they also denounced the dismantling of the State party's public housing system and steps taken to "actively obstruct legislation protecting the right to housing", a reference to the Constitutional Court's suspension of housing legislation initiatives put forward by autonomous communities.

2.11 Finally, on 7 June 2018, the Court dismissed the authors' appeal and confirmed that the eviction would take place on 13 July 2018.

### **The complaint**

3.1 The authors claim that, in the absence of alternative housing and in the light of the fact that their lack of income makes it impossible for them to obtain private housing, the family's eviction from the property they currently occupy would violate their rights under article 11 of the Covenant.

3.2 The authors attach a report from the social services which concludes that "their financial situation is such that they cannot afford any additional expenses beyond their basic needs."

### **Registration of the communication and request for interim measures**

4. On 10 July 2018, the Committee, acting through its working group on communications, registered the communication. Noting the authors' claim that they do not have alternative housing and that being evicted would therefore cause them irreparable harm, the Committee requested the State party to take interim measures in the form of either the suspension of the eviction while the communication is considered or the provision of adequate alternative housing for the authors, in genuine consultation with them.

### **State party's request for the lifting of interim measures and discontinuance of the communication**

5.1 On 13 February 2019, the State party claimed that the situation giving rise to the communication had ceased to exist, since the authors have not been evicted and alternative housing is being sought for them. Accordingly, it requested that the interim measures be lifted and the consideration of the communication be discontinued.

5.2 The State party explains that as the authors were living in the property, the bank did not take back possession of it on 24 March 2017 as planned. The authors' eviction scheduled for 2 June 2017 was also suspended because they had not been notified. When a new eviction date was set for 23 October 2017, the authors filed an appeal. At the related hearing on 3 November 2017, the Court found that the authors did not hold the title deeds for the property and that the property should be handed back to its owner. On the new scheduled date of 5 February 2018, the eviction could not go ahead because of physical obstruction by anti-eviction campaigners. Following another request from the owner, the Court agreed on a new

<sup>2</sup> The authors cite the Committee's Views in *Mohamed Ben Djazia and Naouel Bellili v. Spain* (E/C.12/61/D/5/2015), the jurisprudence of the European Court of Human Rights on the issue and the Supreme Court Judgment of 23 November 2017 on entry to homes and proportionality tests.

eviction date of 13 July 2018 and requested assistance from the social services because there were minors living in the property. The State party specifies that at that point, the authors brought the matter before the Committee but did not inform it that the eviction had been suspended on the same day at the owner's request.

5.3 The State party also explains that although the authors requested a report from the social services on 29 March 2017 with a view to setting up a social rental agreement with the bank, they did not attend the meeting with the social worker scheduled for 20 April 2017, despite it being a prerequisite for the completion of the report. However, on 8 May 2017, the authors requested an urgent appointment with the social worker when a new date was scheduled for the eviction. On 6 June 2017, the report supporting the request for a social rental agreement was submitted to the bank. On 18 October 2017, the authors were added to the Autonomous Community's housing register, which currently lists 10,046 applicants. On 4 September 2018, a meeting was held between the authors, the social welfare adviser, representatives of the association Plataforma de Afectados por la Hipoteca and the manager of the bank branch. According to the State party, the social services "have taken numerous steps to negotiate with the bank for the signature of a contract regularizing the current situation". The authorities are doing their best and using all available means to resolve the authors' housing situation.

5.4 With regard to available financial support, the State party submits that J.M.U.'s applications for a social emergency subsidy and a non-contributory pension were processed on 22 March 2018. However, both applications were rejected because the authors did not provide the required documentation. On 7 June 2018, an application was also made for Valencia Social Inclusion Income, which was granted in February 2019 at a rate of €918 per month. In order to process any benefits for which J.M.U. might be eligible, the social services asked him to provide relevant reports relating to a chronic illness from which he suffers and which prevents him from working, but he has not done so. The State party specifies that from 31 July to 30 September 2018, A.M.O. had a part-time employment contract and earned €588 per month.

5.5 Lastly, the State party indicates that the municipality considers that the family is eligible for emergency social housing until an alternative is found and that it has done everything possible to help them, but that the authors have not cooperated sufficiently with the social services, thus preventing them from dealing with the family's situation more satisfactorily.

#### **Authors' comments on the State party's request for the lifting of interim measures and discontinuance of the communication**

6.1 On 24 June 2019, the authors recognized that the Autonomous Community of Valencia is among the most advanced administrations in terms of developing and guaranteeing this right and its social function, in particular through Act No. 2/2017 of 3 February on the social function of housing in the Autonomous Community of Valencia. However, the authors also stated that the State party needs to develop public housing policies, expand the public housing stock and prevent evictions of persons belonging to the most disadvantaged groups. They pointed out that there are many empty properties owned by banks and "vulture funds".

6.2 With regard to their personal circumstances, the authors recalled that they have no alternative housing and claimed that although they have been receiving Valencia Social Inclusion Income payments of €918 per month since February 2019, in addition to having received a payment of €5,254 in arrears when their application was approved, they cannot afford to rent a property privately.

6.3 The authors stated that on 1 April 2019, the Court scheduled 8 July 2019 as the new date for the eviction. They claim that if they do not find accommodation by that date, they will have to live on the streets or occupy another empty property.

### **Committee's consideration of the State party's request**

7. On 18 July 2019, in the light of the changes in the authors' financial situation, the Committee agreed to the request to lift the interim measures, but decided not to discontinue its consideration of the communication.

### **State party's observations on admissibility and the merits**

8.1 On 16 December 2019, the State party argued that the communication should be declared inadmissible on the ground that it is manifestly ill-founded. The authors continue to live in the property, the eviction has been suspended on seven occasions and the family's needs are being met by public funds, to the extent of available resources.

8.2 The State party specifies that article 11 of the Covenant does not grant an absolute right to live in a property owned by another person, nor does it impose a duty on States to provide housing to any person if resources are insufficient for that purpose. The State party asserts that it is not an enforceable right but rather an obligation for States to take appropriate measures to promote public policies aimed at improving access to decent housing for everyone. Under the Constitution, the right to housing is a constitutional obligation or directive that must inform the actions of the public authorities. In particular, the State party recalls that measures have been taken to facilitate access to the private residential market, both in terms of property ownership, through income tax relief, mortgage subsidies and assistance for young people, and in terms of property rental, through assistance with access to the private rental market. It states that measures have also been taken to try to keep people in the private residential property market by adopting legislation imposing a moratorium on evictions in the event of non-payment of mortgage-backed loans and instituting a code of good practice for banks with a view to avoiding defaults. The State party also indicates that measures have been taken to address emergency needs in cases of lawful evictions. Likewise, the judicial authorities have established protocols for coordination with the social services prior to evictions, so that emergency residential accommodation can be evaluated and provided. These measures acquired legal status following the adoption of Royal Decree-Law No. 7/2019 of 1 March. In addition, the municipal social services are responsible for assessing and monitoring the needs of families. As well as providing public assistance for rent payments, the Autonomous Community of Valencia grants direct assistance with monthly rent payments to persons experiencing a housing emergency. In addition to launching the Infohabitatge network to offer housing advice, provide support with evictions for non-payment and seek housing solutions, it is adjusting the public housing register on the basis of lists provided by large-scale property owners and negotiating agreements for social rental contracts with them. In the medium term, the Community will renovate public housing that is not currently habitable and will increase the amount of public housing that the administration can rent to vulnerable people.

8.3 The State party argues that, in the present case, the authors' rights under article 11 have not been violated: the authors should have demonstrated that they were in a situation of need because their income was too low for them to be able to obtain access to the housing market. The State party specifies that a family's overall resources must be calculated on the basis of monetary income (in the present case, Valencia Social Inclusion Income payments of €918 per month) and any services received free of charge, such as education or health, and that the minimum income needed to obtain access to the housing market must be calculated on the basis of the minimum wage. The State party argues that in the small town where the authors live, it is possible for them to find housing and subsequently apply for the rental subsidies available from the Community. The local authorities have been assessing their needs since 2013, and the social services have been informed of the planned eviction dates.

### **Authors' comments on the State party's observations**

9.1 On 25 February 2020, the authors indicated that it is difficult for them to rent a property because they belong to the Roma community, which faces prejudice from many property owners, and because they do not have an employment contract, which is generally a requirement.

9.2 The authors also claim that the State party does not have sufficient housing, not because there are no empty properties, but because large numbers of shuttered or unused properties dating from the period of rampant construction during the housing bubble are currently owned by banks or vulture funds awaiting a lucrative speculative opportunity. They further claim that the State party is taking no action to address the situation.

9.3 Lastly, the authors claim that the Oliva municipal authorities have committed to negotiating a social rent with the vulture fund that recently bought the property from the bank, but that to date they have not received a favourable response.

## **B. Committee's consideration of admissibility**

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

10.2 The Committee notes that the State party indicates that the communication should be declared inadmissible on the ground that it is manifestly ill-founded for the following reasons: the authors continue to live in the property; the eviction has been suspended on seven occasions; the family's needs are being met by public funds to the extent of available resources; the authors have not cooperated sufficiently with the social services, in particular as they failed to provide the documentation required to assess their entitlement to various forms of assistance, thereby preventing better management of their situation; and the authors have not demonstrated that they are in a situation of need, bearing in mind that, with a monthly income of €918, it is possible to rent a property in the small town where they live. The Committee also notes the authors' assertion that it is difficult for them to rent a property because they belong to the Roma community, which faces prejudice from many property owners, and because an employment contract is generally required.

10.3 Further to article 3 (2) (e) of the Optional Protocol, the Committee declares inadmissible any communication that is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media. For the Committee to consider the merits of a communication, the facts of the case and the claims made must show, at least prima facie, that the authors may be actual or potential victims of a violation of a right enshrined in the Covenant.<sup>3</sup> In the present case, the Committee notes that the authors began to occupy a property without legal title in 2015 and that they have not shown that they have requested alternative housing since then. It further notes that according to the documentation submitted by the State party, which the authors do not contest, they have not cooperated diligently with the social services. Lastly, while they claim that their Roma ethnicity makes it difficult for them to find an owner who will rent a property to them, they do not provide further details regarding any unsuccessful attempts to seek housing, despite having received Valencia Social Inclusion Income payments of €918 per month since February 2019, as well as arrears amounting to €5,254. The Committee recalls<sup>4</sup> that it is the authors' duty first to substantiate their claims and provide the relevant documentation. Consequently, without sufficient evidence before it to determine that the authors' right to adequate housing is under threat, the Committee finds that, in respect of the claim of a violation of article 11 of the Covenant, the communication is not sufficiently substantiated for purposes of admissibility and that it is inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

## **C. Conclusion**

11. Taking into consideration all the information made available to it, the Committee, acting under the Optional Protocol, finds the communication inadmissible under article 3 (2) (e) of the Optional Protocol.

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<sup>3</sup> *S.S.R. v. Spain* (E/C.12/66/D/51/2018), para. 6.4; and *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.15.

<sup>4</sup> *Arellano Medina v. Ecuador* (E/C.12/63/D/7/2015), para. 8.10; and *Martínez Fernández v. Spain* (E/C.12/64/D/19/2016), paras. 6.4–6.5.

12. Pursuant to article 9 (1) of the Optional Protocol, the Committee decides that the present decision shall be transmitted to the State party and to the authors of the communication.

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