



# Economic and Social Council

Distr.: General  
13 November 2020  
English  
Original: Spanish

## 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. 79/2018\*

<i>Communication submitted by:</i>	M.B.B. (represented by Beatriz Pérez García)
<i>Alleged victims:</i>	The author and her children
<i>State party:</i>	Spain
<i>Date of communication:</i>	13 November 2018 (initial submission)
<i>Date of adoption of decision:</i>	15 October 2020
<i>Subject matter:</i>	Eviction of the author from her home
<i>Procedural issues:</i>	Exhaustion of domestic remedies; 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 and 5

1.1 The author of the communication is M.B.B., a Spanish national born in 1991. The author is acting on her own behalf and on behalf of her children, J.I.M.B. and M.M.B., born in 2010 and 2012, respectively. She claims that the State party has violated her rights and those of her children under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by counsel.

1.2 On 14 November 2018, the Committee, acting through its working group on communications, registered the communication and, noting the imminence of the eviction and the alleged lack of alternative housing and risk of irreparable harm, requested the State party to suspend the eviction of the author while the communication was being considered or, alternatively, to provide her with adequate housing in genuine consultation with her, in order to avoid causing irreparable harm to her or her children. On 16 November 2018, the author's eviction was suspended. On 15 November 2019, the author and her family were evicted and went to live with her parents-in-law.

1.3 In the present decision, the Committee will first summarize the information and the arguments submitted by the parties, without taking a position. It will then consider the admissibility of the communication and, lastly, set out its conclusions.

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



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

### The facts as submitted by the author<sup>1</sup>

#### *Before the communication was registered*

2.1 On 12 January 2015, the author and her partner applied to the Community of Madrid for housing, under the procedure for situations of particular necessity.

2.2 In April 2016, the author and her partner decided to occupy, without legal title, a vacant apartment owned by a financial institution, together with their children.

2.3 On an unspecified date, the financial institution filed a complaint for unlawful appropriation in order to have the family evicted from the property. The social services of Madrid city council proposed that the financial institution enter into a social housing contract with the author. The institution rejected this proposal.

2.4 On 10 January 2018, Madrid Court of Investigation No. 14 convicted the author and her partner of a minor offence of unlawful appropriation and sentenced them to a fine of €2 per day for three months and to the payment of court fees. The Court also ordered their eviction. According to the author, she did not appeal against this judgment because the financial institution assured her that she could stay for a few months until she was provided with social housing. On 13 September 2018, the author was notified that 3 October 2018 had been set as the date of eviction.

2.5 On 26 September 2018, the author applied to Madrid Court of Investigation No. 14 for a stay of eviction, claiming that she had nowhere else to live. On 28 September 2018, the author reiterated her request for housing to the Autonomous Community of Madrid and asked to be included in the urgent category since she was about to be evicted. The author also made an appointment with the social services.

2.6 On 3 October 2018, the eviction did not take place and a new date was set: 16 November 2018. On 8 November 2018, the author applied once again for a stay of eviction, noting that she had submitted a request for social housing.

#### *After the communication was registered*

2.7 On 14 November 2018, the Committee, acting through its working group on communications, registered the communication and requested the State party to suspend the eviction of the author while the communication was being considered or, alternatively, to provide her with adequate housing in genuine consultation with her, in order to avoid causing irreparable harm to her or her children. The eviction was postponed again.

2.8 On 5 September 2019, a new order setting the date of eviction as 11 October 2019 was issued. On 11 October 2019, the eviction did not take place<sup>2</sup> and a new date was set: 15 November 2019. On that date, the family was evicted.

### The complaint

3.1 In the author's initial communication, which was submitted when the eviction had been ordered and suspended by Madrid Court of Investigation No. 14, the author claims that the eviction would constitute a violation of article 11 (1) of the Covenant, since she has no adequate alternative housing. The author maintains that the family's only income is a minimum subsistence income of €662.89 per month, which is not enough for rental in the private market, and that she and her family have nowhere else to live. Without invoking a specific article of the Covenant, the author also claims that an immediate eviction would violate the right to education of her children, as they are enrolled in a nearby school. The

---

<sup>1</sup> The facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties in their observations and comments on the merits of the communication.

<sup>2</sup> The author does not explain why the eviction did not take place.

author attaches a social services report of 7 November 2018 stating that the family is at risk of social exclusion, in view of the imminent eviction and the lack of alternative housing.

3.2 The author also states that the right to housing is protected by the State party's Constitution and the Universal Declaration of Human Rights. The author adds that, although the right to decent housing is established in the chapter of the Constitution entitled "Guiding principles of social and economic policy" and cannot be invoked before the domestic courts independently of other related rights, it can be inferred, from a systematic reading of the Constitution, that the strongest possible protection is to be afforded to the right to housing and these related rights. In this regard, the author notes that, according to the separate opinion of Judges Valdés Dal-Ré and Asua Batarrita attached to Constitutional Court judgment No. 3769/2012, a model of protection that does not promote a rights-based and interconnected interpretation of the rights in question would lead to an "incomprehensible regression in their traditional protection". In addition, the European Court of Human Rights has described evictions as the most extreme form of interference with the right to protection of the home and has condemned the lack of minimum standards of habitability and mentioned the obligation to provide adequate alternative housing on the basis of these rights.<sup>3</sup> The author recalls that, in a number of cases, the Court has requested a stay of eviction as an interim measure.<sup>4</sup> The case law of the European Court of Human Rights therefore sets certain minimum standards with respect to fundamental rights, which should serve as a basis for the standards set in domestic law and which cannot, under any circumstances, be lowered. To issue an eviction order without providing adequate alternative housing is to show blatant disregard for this case law and to fall short of the minimum standards that the State party must maintain in order to avoid a violation of fundamental rights.

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

4.1 On 17 May 2019, the State party submitted its observations on the admissibility and merits of the communication and, in the same submission, requested that the Committee discontinue its consideration of the communication.

4.2 The State party recalls that the author was convicted of unlawful appropriation in a judgment that was not appealed and therefore became final. It also claims that the author did not show diligence when applying for housing, as she failed to provide the documents required by the Community of Madrid. According to the author's file at the housing agency of the Community of Madrid, she submitted an initial application on 12 January 2015, which was rejected because the requested documents had not been provided. On 28 September 2018, the author applied again, this time under the emergency procedure in view of her imminent eviction, and on 11 October 2018 she was asked to provide the judgment ordering her eviction and the rental contract for the place where she was living. Since this information was not provided in full,<sup>5</sup> the author was notified on 23 November 2018 that the housing allocation procedure would not be initiated. As regards the author's application to Madrid city council for social housing, the council reports that her application is up to date and will remain pending until the next draw for the allocation of housing.

4.3 The State party also provides information on the steps taken by the social services. The family has been on file with the municipal social services since 2002 and has received regular and ongoing support. Among other things, the social services requested the financial institution that owns the property in question to suspend the eviction and to negotiate a social rental contract. The institution rejected these proposals. According to a report by the social services, the family was offered the emergency housing solution that was available, that is, a room shared with another family, provided by the Municipal Emergency Social Services. This offer was refused by the family on the basis that there was accommodation available

<sup>3</sup> The author does not cite any specific judgments of the European Court of Human Rights in this regard.

<sup>4</sup> *A.M.B. and others v. Spain* (application No. 77842/12), *Raji and others v. Spain* (application No. 3537/13) and *Ceesay Ceesay and others v. Spain* (application No. 62688/13).

<sup>5</sup> The author provided a certificate dated 17 October 2018, to which she attached the eviction order. However, she did not provide the relevant judgment, nor did she provide a rental contract, since she was not occupying the property as a tenant.

within the family network. The social services believe that the family does not agree with the strategy proposed by the social services in order to resolve its socioresidential problem and shows little motivation to address the need for the adults in the family to receive training and literacy support in order to gain access to stable employment and safe accommodation. The social services also maintain that the author considers social housing to be the only option and believes that continuing to occupy the apartment is the quickest way to obtain housing of that kind. The social services believe that housing shared with another family would be the best solution to the family's housing problem, but the author does not agree.<sup>6</sup>

4.4 The State party submits that the present case does not involve a tenancy protected by article 11 of the Covenant and that the return of the property to its owner therefore does not constitute a forced eviction within the meaning of article 11 of the Covenant and the Committee's case law. Paragraph 3 of general comment No. 7 (1997) on forced evictions states that the prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the international human rights covenants. In addition, the right to own property is protected by article 17 of the Universal Declaration of Human Rights and article 33 of the Constitution.

4.5 The State party argues that the right to housing is not an absolute right to a particular dwelling owned by another person, nor is it an absolute right to be provided with housing by the authorities, if public resources are insufficient for the provision of such housing. The State party considers that article 25 (1) of the Universal Declaration of Human Rights and article 11 (1) of the Covenant do not recognize an enforceable, subjective right, but rather establish a mandate for States to take appropriate measures to promote public policies aimed at improving access to decent housing for everyone. According to the case law of the Court of Justice of the European Union,<sup>7</sup> the right enshrined in article 34 (3) of the Charter of Fundamental Rights of the European Union is not the right to housing but rather the right to housing assistance within the framework of social policies based on article 153 of the Treaty on the Functioning of the European Union. This State mandate has been expressly recognized in article 47 of the Constitution and various statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,<sup>8</sup> the right to housing is "a constitutional mandate or guiding principle" that calls primarily for social measures but does not in itself constitute a separate area of competence of the State. It is therefore the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land for the common good in order to prevent speculation. This right, which is to be realized progressively, is thus fully protected by the State party in line with its international legal obligations.

4.6 The State party also maintains that the following elements should be taken into account when assessing the extent to which the State has fulfilled its obligations in relation to this right: (a) the minimum level of resources needed to gain access to the open housing market; (b) the number of persons below that threshold; and (c) the public funds in the budget available to cover the shortfall. The State must make use of all the resources reasonably available to it. If those resources are insufficient to cover all needs, housing allocations must be made on the basis of objective criteria and the principle of equality. In this regard, paragraph 16 of general comment No. 7 (1997) states that lawful evictions should not result in persons being rendered homeless or vulnerable to the violation of other human rights and describes the obligation of the State as that of taking "all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing ... is available".

4.7 Consequently, according to the State party, in the present case, the author should provide sufficient evidence that she is in a state of need inasmuch as she lacks the resources needed to gain access to the open housing market; that the competent authorities have not devoted their resources, to the extent possible, to meeting such needs; that the available public

---

<sup>6</sup> The State party provides a social services report of 6 May 2019 containing this information.

<sup>7</sup> Court of Justice of the European Union, *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria* (case C-539/14), order of 16 July 2015, para. 49.

<sup>8</sup> Constitutional Court judgments No. 152/1988, No. 7/2010 and No. 33/2019.

resources have not been allocated in a rational and objective manner, addressing first and foremost the situations of those in greatest need; and that she has not deliberately committed acts or been responsible for omissions that have kept her from receiving the assistance that is publicly available.

4.8 The State party describes the decisions that have been taken to protect the right to housing. It has taken measures to facilitate access to the private housing market, including tax relief for property owners and rental subsidies for tenants. In addition, policies have been introduced to keep property owners from leaving the private housing market, including a freeze on evictions in cases of non-payment of mortgage instalments and the adoption of a code of good practices, which is followed by more than 93 financial institutions. In order to avoid emergencies arising from legitimate evictions being carried out before alternative permanent housing is available for the persons concerned, Royal Decree-Law No. 7/2019 establishes a mechanism whereby vulnerable persons may have their eviction suspended for one month if the owner is a natural person or three months if the owner is a legal person. The State party has also taken steps to promote the maintenance of a sufficient stock of public housing by establishing in urban planning legislation that, where private land is to be used for urban development, some of that land must be made available for public purposes free of charge, and by financing the construction of social housing on such land. Lastly, the State party has established objective criteria for assessing the needs of applicants for social housing and allocating such housing.

4.9 The State party concludes that, in this case, where a person chose to illegally occupy another person's property and rejected the emergency solution offered because it was more convenient for her to continue occupying the property without legal title, the authorities did not violate article 11 (1) of the Covenant, as they postponed the date of eviction by several months, assessed whether the person was in need and offered emergency housing. In the present case, the situation is due to the actions of the authors, who are occupying another person's property by force and will not accept emergency housing.

4.10 The State party requests that the Committee declare the communication inadmissible and discontinue its consideration of the communication on the grounds that it constitutes an abuse of the right of submission, since the author illegally occupied another person's property and rejected the emergency housing offered, and her claims have not been sufficiently substantiated.

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

5.1 On 8 October and 8 November 2019, the author sent written submissions indicating that a new date of eviction had been set and providing her comments on the admissibility and merits of the communication. The author requested that the Committee reiterate its request for interim measures to the State party, as a new eviction order had been issued on 5 September 2019, setting 11 October 2019 as the date of eviction. The author maintains that this eviction order was notified to her personally and not to her legal representative. The author states that, owing to her situation of social exclusion and low level of education, she did not immediately notify her legal representative of the new order, having tried in vain to contact the institution that owned the property.

5.2 The author reiterates that she did not appeal against her conviction for unlawful appropriation because an oral agreement had been reached with the complainant regarding the negotiation of a social rental contract. The author also states that the documents provided clearly demonstrate the precarity of the family's socioeconomic situation and that all the information requested by the social housing agencies of Madrid city council and the Community of Madrid was provided.<sup>9</sup> The author also denies that she rejected an offer of alternative housing and claims not to have received any such offer.

5.3 The author reiterates that both the Constitution and various human rights treaties ratified by the State party protect the right to adequate housing, as well as other related rights such as the right to physical integrity, the right to privacy and the inviolability of the home

<sup>9</sup> The author provides receipts showing that the eviction order of 17 October 2018 was submitted to the two social housing agencies.

and of private and family life. The author adds that, although the right to decent housing is established in the chapter of the Constitution entitled “Guiding principles of social and economic policy” and cannot be invoked before the domestic courts independently, this does not prevent such rights from being recognized as fundamental or from being asserted in connection with other fundamental rights. The author notes that, according to recent case law of Madrid Court of First Instance No. 39, the very fact that this right is included in the supreme law of the domestic legal system should be considered an indication of its fundamental nature.<sup>10</sup> Furthermore, according to the case law of the Constitutional Court, the rights enshrined in the Constitution should be interpreted in the light of the international agreements ratified by Spain<sup>11</sup> and therefore in accordance with the Covenant and general comment No. 7 (1997).

5.4 According to the author, the European Court of Human Rights has confirmed that it is always the State that is responsible for protecting the right to housing and for providing a housing solution in the event of forced eviction, especially when members of a vulnerable group are involved, such as children, in line with the Convention on the Rights of the Child.<sup>12</sup> Consequently, the author claims that the public authorities that were competent to provide adequate alternative housing should have intervened before her eviction.

5.5 Lastly, the author notes that the bank that brought the eviction proceedings no longer owns the property and that, as she understands it, Madrid Court of First Instance No. 14 should have been informed of this fact in order to allow for procedural succession. The author claims to have brought the situation to the attention of the Court.<sup>13</sup>

#### **State party’s additional observations on admissibility and the merits**

6. On 25 June 2020, the State party provided additional information on the latest events that had occurred since the eviction. The State party attaches a social services report of 5 June 2020 stating that the author and her family have moved into the house of her parents-in-law, which is near their previous home. The social services have helped the family to register their new place of residence. The family have requested that the children be transferred to a school that is closer to their new home and have also requested assistance to cover their basic food needs.

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

7. 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.

#### **Failure to exhaust domestic remedies**

8.1 The Committee recalls that article 3 (1) of the Optional Protocol precludes it from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. In principle, according to treaty body and international human rights court practice, it is for the State party to request inadmissibility on the grounds of failure to exhaust domestic remedies and to specify which judicial remedies have not been exhausted, since it is the State party that has precise knowledge of these remedies. In the present case, although the State party did not expressly request inadmissibility on these grounds, the Committee notes that the State requested that the communication be declared inadmissible on the grounds of abuse of the right of submission and pointed out that the author had been convicted of unlawful appropriation in a judgment that was not appealed and therefore became final. The Committee therefore understands the State party to be claiming that the communication is inadmissible on the grounds that it constitutes an abuse of the right of

---

<sup>10</sup> Judgment No. 1649/12 of Madrid Court of First Instance No. 39.

<sup>11</sup> Constitutional Court judgment No. 31/2013 of 14 March 2013, reason 5.

<sup>12</sup> The author does not refer to any specific case law in this regard.

<sup>13</sup> The author does not provide any supporting documents or any information about a pronouncement by the Court on this matter.

submission inasmuch as the author submitted it without having appealed her conviction and therefore failed to exhaust domestic remedies.

8.2 The Committee notes that the judgment in question was handed down in criminal proceedings. As a general rule, criminal proceedings are not a setting in which individuals are able to assert their right to adequate housing. However, the Committee notes that, in this case, the author was ordered to vacate the property in the judgment itself and as a direct consequence of her conviction for a minor act of unlawful appropriation. The eviction order could therefore have been appealed at the same time as the conviction. If the court of appeal had found that the author was exempt from criminal responsibility – for example because she was in need – the conviction and the eviction order could have been overturned. This remedy of appeal, which was available to the author, was therefore an effective remedy that could have prevented her eviction.

8.3 The conclusion reached in the paragraph above is in line with the Committee's Views concerning a previous communication involving the same State party.<sup>14</sup> In those Views, the Committee established that a conviction for unlawful appropriation could be legitimate grounds for an eviction but that, before the forced eviction was carried out, it was necessary to weigh the legitimate objective of the eviction against the consequences of the eviction for the persons to be evicted.<sup>15</sup> The Committee found that the State party had not clearly established a mechanism that would make assessments of that kind possible and therefore recommended that the State party, to protect the right to housing, put in place a legal framework incorporating a requirement for judges to carry out such assessments. It may seem contradictory for the Committee to find that appeal proceedings were an effective remedy in this case, when, in a previous case, it had found that there was no mechanism enabling judges to assess the proportionality of an eviction; however, the fact is that, in this case, appeal proceedings could have led to the withdrawal of the eviction order and were therefore an effective remedy.

8.4 The author asserts that she did not appeal against the judgment because an oral agreement had been reached with the complainant regarding the negotiation of a social rental contract. However, there is nothing to suggest that such negotiations would have prevented the author from appealing against the judgment in which she had been convicted of unlawful appropriation. The Committee also notes that the author was represented by counsel in the criminal proceedings brought against her for unlawful appropriation and that there is nothing in the case file to indicate that she did not have access to the remedy in question, or that an appeal against a conviction at first instance for unlawful appropriation was not an effective remedy in the circumstances of the case. In the absence of information indicating that the remedy in question was unavailable to the author or would have been ineffective, the Committee considers that, according to the information in the case file, the author did not exhaust all available domestic remedies. Consequently, the Committee finds the communication inadmissible under article 3 (1) of the Optional Protocol.

#### **Insufficient substantiation of claims**

9.1 The Committee notes the State party's claim that the author did not provide the information requested by the social housing agencies, that she rejected the emergency housing that was offered and that, since the eviction, the family has moved in with the author's parents-in-law. The author states that all the information requested by the social housing agencies was provided to them<sup>16</sup> and claims not to have received an offer of alternative housing. The Committee notes that the author did not provide all the information requested by the agency of the Community of Madrid, since she was asked for a rental contract or legal title that she did not have and therefore could not provide. The Committee notes that the author claims not to have received an offer of emergency housing. However, it also notes that the State party provides two social services reports indicating that the family was offered the emergency housing solution that was available, namely a shared room provided by the Municipal Emergency Social Services, but that the family refused this offer

<sup>14</sup> *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 2.4.

<sup>15</sup> *Ibid.*, para. 11.5.

<sup>16</sup> The author provides receipts showing that the eviction order of 17 October 2018 was submitted to the two social housing agencies.

because there was accommodation available within the family network. The Committee notes that the author has not contested the report that the family has been living with her parents-in-law since the eviction.

9.2 Pursuant to article 3 (2) (e) of the Optional Protocol, the Committee will declare inadmissible any communication that is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media. The Committee notes that the author began occupying an apartment without legal title in 2016 and was evicted, after several suspensions, on 15 November 2019. The Committee notes that the author did not make use of the emergency housing solution and that, since the eviction, she has been living at the home of her parents-in-law. The author does not provide further details about the conditions in which she is now living.

9.3 The author therefore has not shown that, as a result of the eviction, she has been deprived of her right to adequate housing – for example, by having been made homeless or finding herself in a dwelling that does not meet the minimum requirements for housing suited to the basic needs of the family unit. The Committee notes that the author is in a situation of social exclusion and claims to have a low level of education. The Committee understands that communications are sometimes submitted by persons who have no legal representative or whose legal representative is not a lawyer or jurist trained in international human rights law. The Committee must therefore refrain from imposing any unnecessary formalities in order to avoid creating obstacles to the submission of communications for its consideration. For the Committee to consider the merits of a communication, however, 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>17</sup> In this case, the Committee notes that while the author is represented by counsel, both in domestic proceedings and before the Committee, she has not explained or indicated how her and her children's right to adequate housing has been violated by the eviction. In particular, it can be concluded from the information available in the file that the author and her family have not been made homeless by the eviction, as they have been living at the home of her parents-in-law. Consequently, as the Committee does not have sufficient evidence before it to determine that, in this case, the right to adequate housing of the author and her children has been violated or is actually threatened, it finds that the claim of a violation of article 11 of the Covenant is insufficiently substantiated for purposes of admissibility and is therefore inadmissible under article 3 (2) (e) of the Optional Protocol.

9.4 The Committee also notes that the author mentions that the eviction could violate the right to education of her children, without referring to a specific article of the Covenant. The Committee notes that the author does not specify how the eviction might violate this right; that, according to the social services report, the children have requested to be transferred to a school closer to their new home; and that it cannot be concluded from the author's allegations or from the information in the file that such a transfer could violate their right to education. Consequently, the Committee finds that the claim of a violation of the children's right to education is insufficiently substantiated for purposes of admissibility and is inadmissible under article 3 (2) (e) of the Optional Protocol.

9.5 The State party also considers that the communication constitutes an abuse of the right of submission for the reasons explained above, that is to say, because the author illegally occupied another person's property and rejected the emergency housing solution that was available, and because her claims have not been sufficiently substantiated. However, the Committee is of the view that, in the light of the facts and circumstances described, the present communication does not constitute an abuse of the right to submit a communication within the meaning of article 3 (2) (f) of the Optional Protocol; an abuse of that kind typically arises from the submission of a communication in bad faith.

---

<sup>17</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.



### **C. Conclusion**

10. Taking into consideration all the information made available to it, the Committee, acting under the Optional Protocol, decides that the communication is inadmissible under article 3 (1) and (2) (e) of the Optional Protocol.

11. The Committee therefore decides that, pursuant to article 9 (1) of the Optional Protocol, the present decision shall be transmitted to the author of the communication and to the State party.

---