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Committee on Economic, Social and Cultural Rights

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 26/2018* **

<i>Communication submitted by:</i>	Josefa Hernández Cortés and Ricardo Rodríguez Bermúdez (represented by counsel)
<i>Alleged victims:</i>	The authors and their daughters
<i>State party:</i>	Spain
<i>Date of communication:</i>	7 March 2018 (initial submission)
<i>Date of adoption of Views:</i>	10 October 2022
<i>Subject matter:</i>	Eviction of a family from a dwelling occupied without legal title
<i>Procedural issue:</i>	Failure to exhaust domestic remedies
<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 authors of the communication, which was received on 7 March 2018, are Josefa Hernández Cortés and Ricardo Rodríguez Bermúdez, nationals of Spain born on 29 November 1977 and 16 August 1969, respectively. They submit the communication on their own behalf and on behalf of their minor daughters, S. and I., born on 25 October 2008 and 14 August 2013. The authors claim that their and their daughters' eviction would violate their rights under article 11 of the Covenant. The Optional Protocol entered into force for Spain on 5 May 2013. The authors are represented by the lawyers Alejandra Jacinto Uranga and Francisco Javier Rubio Gil.

1.2 On 13 March 2019, the State party requested the suspension of the Committee's consideration of the communication. On 12 April 2019, the authors objected to the suspension of the Committee's consideration. On 23 January 2020, the Committee, acting

* Adopted by the Committee at its seventy-second session (26 September–14 October 2022).

** The following members of the Committee participated in the examination of the communication: Aslan Abashidze, Mohamed Ezzeldin Abdel-Moneim, Nadir Adilov, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Peters Sunday Omologbe Emuze, Ludovic Hennebel, Karla Vanessa Lemus de Vásquez, Seree Nonthasoot, Lydia Ravenberg, Preeti Saran, Shen Yongxiang, Heisoo Shin, Rodrigo Uprimny, Michael Windfuhr and Mohammed Amarti. Pursuant to rule 23 of the rules of procedure under the Optional Protocol, Mikel Mancisidor de la Fuente did not participate in the examination of the communication.



through its Working Group, decided not to suspend its consideration of the communication as the appeal had been dismissed and the eviction proceedings had been resumed.

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

Factual background¹

Before registration of the communication

2.1 The authors state that, since 2008, they have submitted several unsuccessful applications for social housing to the Madrid Housing Authority. The authors managed to rent an apartment on the private market between 2010 and 2014 but lost their jobs and could not afford to pay the rent from 2014 onward. According to the authors, they had no choice but to move into an apartment owned by a bank because they had no alternative housing and their applications for social housing had been unsuccessful. They claim that the apartment in question was unoccupied.

2.2 On an unspecified date, the bank that owned the apartment submitted a complaint concerning the author's unlawful occupation of the property to Madrid Court of Investigation No. 50. During the proceedings, the author claimed that she had moved into the apartment because it was empty and because, being unable to pay rent, she had no other way of providing her daughters with housing; that she had asked the bank to allow them to live in the apartment in exchange for an affordable rent; that she had applied for social housing; and that one of her daughters had problems that required special assistance.

2.3 On 4 December 2015, the author submitted an application for housing to the Municipal Housing and Land Company of Madrid city council. Her application was accepted and she was placed on the waiting list.

2.4 On 15 December 2015, the Court found the author guilty of the offence of unlawful occupation of a property, which is punishable under article 245 (2) of the Criminal Code. She was sentenced to a fine of €3 per day for three months and to the payment of court fees. If she failed to pay, the penalty would be 1 day of imprisonment for every two missed daily payments. The court also issued an order for the author and her family to vacate the dwelling and for social services to be informed of the decision so that they could assist them. The author appealed against the judgment before the Provincial High Court of Madrid.

2.5 On 23 March 2016, the Provincial High Court partially reversed the judgment of the Court and acquitted the author of the minor offence of unlawful occupation, finding that her state of necessity, caused by her financially precarious situation, was grounds for a full exemption. In this regard, the Provincial High Court noted that the authors had two daughters, aged 7 and 2 years, that they were unemployed and that they had unsuccessfully applied for social housing. The Provincial High Court considered that, given the family's socioeconomic vulnerability and their efforts to find a solution to their problem, their need was more serious than the violation of the protected legal right. The Provincial High Court considered that this did not exempt the authors from the obligation to vacate the dwelling since they did not have any title justifying their occupation of it.

2.6 On 21 February and 28 June 2017, the Court issued eviction orders against the authors. On both occasions, the eviction was suspended after applications citing the authors' socioeconomic situation and lack of alternative housing were filed by the authors and social services.

2.7 On 10 July 2017, the authors again asked the bank to allow them to stay in the apartment in exchange for an affordable rent. Instead of responding to their request, the bank requested their eviction. On the same date, the authors submitted another application for housing to the Municipal Housing and Land Company.

¹ These 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.

2.8 On 3 July 2017, the author submitted an application for social housing to the Community of Madrid. She claimed that she was in a special state of necessity. On 2 November 2017, the Community of Madrid, acting pursuant to article 14 (1) (f) of Decree No. 52/2016 of 31 May on the establishment of the emergency social housing stock, refused the author's application on the grounds that she was occupying a dwelling without legal title.

2.9 On 4 January 2018, the Court issued an order for the eviction of the authors and their daughters, to take place on 9 March 2018. When the communication was registered, the authors claimed that there was no means by which they could have challenged the eviction order or requested its suspension and that all domestic remedies had therefore been exhausted.

After registration of the communication

2.10 On 8 March 2018, the Committee registered the communication and requested the State party to take interim measures to avoid possible irreparable harm to the authors and their daughters while the case was being considered by the Committee by suspending the eviction or by providing alternative housing appropriate to their needs in genuine and effective consultation with them.

2.11 On 8 March 2018, the entity that owned the property requested the suspension of the eviction for one month as the city council was looking for alternative housing for the authors. On 13 March 2018, the Court suspended the eviction for one month.

2.12 On 13 November 2018, the Court issued an order for the eviction of the author and the other occupants of the dwelling. The author filed an application for reconsideration of this order. On 11 December 2018, the Court dismissed the author's request for reconsideration and upheld the eviction order. The author lodged an appeal against this decision. On 7 February 2019, the Provincial High Court rejected the appeal. The Provincial High Court considered the content of the request for precautionary measures issued by the Committee. In this regard, the Court noted that the Committee had proposed two possible options for the State party: suspending the eviction or providing adequate alternative housing. The Court considered that the first option could reasonably be considered to have been exhausted, without the administrative authorities having found a solution to the housing problem, and that the eviction could not be suspended as a precautionary measure indefinitely as this would be excessively harmful to the owner.

2.13 On a number of occasions from 10 December 2018 onward, the Court issued orders for the eviction of the authors. On each occasion, the order was suspended before it was executed for different reasons related to the family's socioeconomic situation. On 29 June 2021, the Court suspended the eviction scheduled for 7 July 2021 in view of the request submitted by the authors under Royal Decree-Law No. 8/2021 of 4 May on the adoption of urgent measures in the health, social and legal spheres to be implemented after the end of the state of emergency. On 2 November 2021, the Court issued an order for the eviction of the authors, to take place on 1 December 2021. The authors requested the suspension of the order under Royal Decree-Law No. 21/2021 of 26 October on the extension of social protection measures to address situations of socioeconomic vulnerability.

Complaint

3.1 The authors claim that the State party violated their right to adequate housing under article 11 of the Covenant because the judicial authorities ordered their eviction without providing them with alternative housing. They argue that although they receive a minimum income benefit from the Community of Madrid and the author has a part-time job, this income is insufficient to support the family and rent housing in the private market.

3.2 The authors claim that, although the State party's judicial authorities are aware of their situation and the Provincial High Court had found that they were in a state of necessity and vulnerability, the authorities did not consider their situation or the impact that the eviction would have on their rights. Moreover, the State party's laws do not allow judges to assess the impact that an eviction order might have on persons in the authors' situation.

3.3 The authors also consider that the right to adequate housing might be violated if they are evicted without alternative housing. The authors note that, although they are in a

particularly vulnerable situation, all the applications for social housing that they submitted to the Community of Madrid have been rejected. Moreover, on 2 November 2017, the author's application for social housing was rejected because she was occupying an apartment without legal title, despite the fact that the Provincial High Court had exempted her from any criminal liability because she was in a state of necessity.

State party's observations on admissibility and the merits

4.1 On 10 September 2018, 13 March 2019 and 15 July 2020, the State party provided its observations on the admissibility and merits of the communication.

4.2 The State party claims that the family is not engaging with any support pathway provided by social services with a view to obtaining alternative housing. It attaches a report from social services supporting this claim. Social services state that the family has rejected offers of shared housing and has expressed the desire to regularize their situation in the dwelling that is the subject of the eviction order. The authors continue to be registered as applicants for housing with the Municipal Housing and Land Company of Madrid city council but have not yet been allocated housing. The authors have also applied to the Madrid Social Housing Agency for emergency social housing. These applications were rejected on 10 October 2018, 14 February 2020 and 16 December 2020. On the first occasion, the application was rejected on the grounds that the family was occupying a dwelling without legal title, which rendered their application ineligible under article 19 (1) (d) of Decree No. 52/2016. On the other occasions, the applications were rejected because they did not provide all the required documentation, in particular, documentation proving that they were not occupying a dwelling without legal title. In July 2020, the family had an income of €584 per month, although the State party points out that, if they received the minimum income support established under Royal Decree-Law No. 20/2020 of 29 May, their income might rise to €1,015 per month.

4.3 On 22 February 2021, the State party sent additional observations claiming that the authors had acknowledged that their housing application to the Community of Madrid was incomplete because they had not provided all the necessary documentation. The State party adds that, on 16 December 2020, the authors submitted a new application for housing that is also pending the submission of the required information.

4.4 With regard to admissibility, the State party considers that the authors have not exhausted all domestic remedies as they have failed to comply with the request made by the Madrid Social Housing Agency that they prove that they are not occupying a dwelling without legal title. The State party also affirms that the judicial proceedings are not yet complete as the eviction order has not been implemented.

4.5 With regard to the merits, the State party notes that the authors and their daughters enjoy free health care, free access to justice and free or subsidized basic provisions. The family has also been supported by social services since 2016. The family's needs are therefore being met by public funds, to the extent of the available resources.

4.6 First, the State party affirms that the right to own property is also a fundamental human right, protected by article 17 of the Universal Declaration of Human Rights and article 33 of the Spanish Constitution. The State party considers that the Covenant cannot be used to legitimize the occupancy of other people's property as this would violate their right to private property. The State party notes that the Committee's general comment No. 7 (1997) recognizes that evictions are sometimes justifiable, including when a person is occupying another person's property.

4.7 The State party also argues that the right to housing is not an absolute right to a particular dwelling owned by another person, nor is there an absolute right to be provided with housing by the authorities if public resources are insufficient for this right to be realized. 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, 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 Spanish Constitution and various statutes of autonomy. In line with this article, and according to the case law of the Constitutional Court, the right to housing is “a constitutional mandate or guiding principle” that calls primarily for the adoption of 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 Spanish citizens 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. Given that this right is to be realized progressively, the State is complying fully with its international obligations in this area and refers to the arguments set forth in similar communications concerning the efforts undertaken in the sphere of housing.

4.8 The State party argues that the two fundamental issues to consider in assessing the fulfilment of its obligations under the Covenant are: (a) that the State should cover the housing needs of those who do not have sufficient resources to secure housing, to the extent of the resources reasonably available to it, taking into account the situation of public finances; and (b) that when such resources are insufficient to cover all possible needs, housing allocations should be made on the basis of objective criteria and the principle of equality, so that they are satisfied in order of need.

4.9 The State party understands that, for an individual communication to be admissible under article 11 (1) of the Covenant, the author must provide sufficient evidence: (a) that he or she is in a situation of need inasmuch as he or she lacks the resources needed to gain access to the open housing market; (b) that the competent authorities have not devoted resources to the extent possible to meeting the housing needs of families in a genuine situation of social exclusion (including by taking steps to facilitate access to and prevent withdrawal from the private housing market, by adopting emergency measures in cases where such withdrawal is legally appropriate as a transition to the public housing system and by investing sufficiently in the public housing regime); (c) that, in the event that the available public resources are insufficient to cover all existing genuine needs, the allocation of scarce public resources has not been made in a rational and objective manner, addressing first and foremost the situations of those in greatest need; and (d) that the author has not deliberately committed acts or been responsible for omissions that have kept him or her from receiving the assistance that is publicly available.

4.10 The State party concludes from the above that a breach of the Covenant would occur only if, simultaneously and cumulatively, the authors’ family was in a situation of social exclusion, no emergency shelters were provided, and no public housing was allocated on the basis of an objective procedure that guaranteed the provision of housing in accordance with applicants’ needs. The State party submits that it has taken numerous measures to address the economic crisis with a view to facilitating access to the private housing market for the purpose of buying or renting property; to keep property owners from leaving the private housing market; and to address situations of urgent need by establishing protocols that promote coordination between the courts and the municipal social services prior to evictions, thus making it possible to assess the need for, and to provide, emergency housing solutions. The social services are responsible for assessing and monitoring the needs of families.

4.11 The State party considers that, if the above criteria are applied to the present case, it may be concluded that there has been no violation of article 11 of the Covenant, since the social services were present on the eviction dates and followed up on the family’s situation and the judicial authorities suspended the eviction on several occasions without establishing a new eviction date. The State party notes that the authors have been occupying a property that does not belong to them since 2014, that they are not engaging with the social and employment pathway proposed by social services and that they are considering no options other than that of unlawfully remaining in the property. As the administrative authorities have been proven to have taken every possible measure to assist the authors, the State party considers that it has complied with its obligations under the Covenant and that the communication lacks merit.

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

5.1 The authors submitted observations on the admissibility and merits of the communication on 11 January 2019, 12 April 2019, 29 May 2019, 4 July 2019 and 31 December 2020, and elaborated on these observations on 30 June, 9 August and 23 November 2021.

5.2 First, the authors stress that they occupied a dwelling without legal title only as a last resort, when they had no alternative, and that this was confirmed by the Provincial High Court, which considered the author's state of necessity as grounds for a full exemption and acquitted her.

5.3 The authors acknowledge that the eviction has not taken place and has been suspended but claim that this was possible only because the Committee requested interim measures. It does not mean that an eviction will not take place in the future.

5.4 The authors report that, on 22 December 2020, they were granted the right to receive minimum income support, which, in their case, amounts to €843 per month and replaces the minimum subsistence income that they had previously been allocated.

5.5 The authors claim that they have taken every possible step to secure housing through legal channels, in particular, by taking three courses of action. First, they submitted applications for housing to the Community of Madrid on a regular and continual basis between 2009 and 2020. However, this avenue is closed as the applicable regulations exclude applications from any person occupying a dwelling without legal title. In this connection, the authors note that their application was rejected on these grounds on 2 November 2017. Although their subsequent applications were rejected on the formal grounds that they had not provided all the necessary documentation, they were actually rejected because they were occupying a dwelling without legal title. This is apparent from the fact that they provided all the documentation requested but cannot comply with the request for proof that they were not occupying a dwelling without legal title. In the authors' view, the administrative authorities are using this approach to attempt to cover up the fact that families in their circumstances are being excluded from social housing. The authors are concerned to note that they are being denied access to social housing because they are occupying a dwelling without legal title when a court has issued a decision recognizing that they are occupying it because they are in a state of necessity. The authors note that the Committee recommended that the State party end the practice of excluding applicants for housing who are occupying a property without legal title.² They report that the Ombudsman has expressed the same view and considers that this form of exclusion constitutes the main obstacle to addressing the housing needs of vulnerable persons in Madrid. They add that persons whose applications are accepted are not immediately allocated housing. Rather, their names are added to a waiting list on which they can spend years, as there is a worrying shortage of social housing in the Community of Madrid.

5.6 Second, the authors submitted applications for housing to Madrid city council in 2018 and 2020. With regard to these applications, the authors wish to point out that, although the State party has submitted documentation claiming that they have rejected offers of shared housing, they have not done so. The authors state that the city council does not have shared housing in their district and that the social workers merely proposed to assess the family's chances of obtaining such housing, even though the chances were very remote and the family might have been separated. Therefore, in the authors' view, they should not be considered to have rejected this option, which, in any case, would not have provided the family with decent alternative housing. The author notes that, on 4 February 2021, 398 housing units were on offer, while 28,200 persons had applied to Madrid city council for public housing. None of these units was allocated to the author.

5.7 Third, the authors have negotiated with the entity that owns the dwelling with a view to regularizing their situation through a rental contract. The authors note that the numerous actions that they have taken include contacting charitable and humanitarian associations, such as Caritas Internationalis and the Red Cross Housing Programme, and maintaining a cordial

² *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 17.

and constructive ongoing dialogue with the various financial entities that have owned the dwelling.

5.8 The authors argue that the fact that the family enjoys health care, legal assistance and schooling does not exclude the possibility that other rights might be violated, such as the right to adequate housing. It further notes that these rights are interdependent and that the violation of the right to adequate housing can have an impact on other human rights. In addition, the authors note that the progressive realization of economic and social rights, including the right to adequate housing, is an obligation of the State party that cannot be evaded through unjustified backsliding or imbalances. In the case of the State party, where social development is relatively advanced, there are glaring inequalities and inequities between citizens, and from region to region, that result in housing shortages for families such as the authors. According to the authors, a wave of evictions occurred in the wake of the bursting of the real estate bubble in 2008, which was noted by the Committee in its concluding observations of 18 May 2012.³ In this regard, the authors note that the State Housing Plan for 2018–2021, which contains measures to address this situation, has not been implemented in some autonomous communities, including the Community of Madrid.

5.9 The authors consider that the State party is setting the right to private property as an absolute human right against the authors' occupation of a dwelling without legal title. First, the authors point out that the owner is not an individual but a financial entity that owns many properties. Second, they note that the Provincial High Court has already weighed the right to private property against the authors' state of necessity and has ruled in favour of the authors by considering their state of necessity to be grounds for a full exemption, despite which it ordered their eviction.

5.10 The authors conclude that the State party could have provided alternative housing and that, during the judicial proceedings, there should be a procedural means by which to present and examine allegations regarding the economic and social rights of evicted persons. They therefore consider that their right to adequate housing has been violated because their eviction was ordered when they had no alternative housing and because they were denied access to social housing.

B. Committee's consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10 (2) of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 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. The State party argues that the authors have not exhausted all domestic remedies because they did not produce the documentation required by the Community of Madrid to complete their application for social housing after occupying their current dwelling. The Committee is of the view that, for the purposes of article 3 (1) of the Optional Protocol, "available domestic remedies" are all remedies available to the author in direct relation with the events that initially gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant. The Committee notes that the main complaint put forward in the present communication is that the authors' eviction would violate the Covenant because they have no alternative housing and the authorities have taken no action despite their requests. Therefore, the remedies that must be exhausted are, first and foremost, those directly related to the eviction, such as remedies aimed at preventing or delaying the eviction or serving to notify the courts of the lack of alternative housing. In this connection, the Committee notes that the authors exhausted all the available remedies aimed at preventing or delaying the eviction, since, at the time when the author submitted her communication, she had appealed against the judgment of conviction ordering her to vacate the property, thereby exhausting this avenue, and had requested the suspension of the eviction order, a request that had been rejected until

³ [E/C.12/ESP/CO/5](#).

the entity that owns the dwelling had submitted its request. With respect to the application for social housing filed with the Community of Madrid, the Committee notes that, according to the State party, persons such as the author who are occupying a property without legal title cannot apply to this body for social housing. The Committee recalls that, in considering a previous communication, it found that this requirement constitutes an impediment to access to housing that is in itself a violation of the Covenant.⁴ The Committee therefore finds that the State party has failed to sufficiently demonstrate that this remedy would have been effective in the circumstances of the present case. Accordingly, the Committee is of the view that the authors have exhausted all available domestic remedies in relation with this claim and that their communication is admissible under article 3 (1) of the Optional Protocol.

6.3 The Committee notes the State party's claim that the authors have not sufficiently substantiated their allegations as they have rejected the proposal of temporary accommodation and the State party has taken every possible measure to the maximum of its available resources. The Committee notes that the authors have been unsuccessfully applying for social housing since 2008 and that their applications have been rejected. The Committee therefore considers that the authors' allegations are sufficiently substantiated and declares the communication admissible under article 3 (1) of the Optional Protocol.

6.4 The Committee notes that the remainder of the communication meets the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communication admissible and proceeds to its consideration on the merits.

C. Committee's consideration of the merits

Facts and legal issues

7.1 The Committee has considered the present communication taking into account all the information provided to it, in accordance with the provisions of article 8 of the Optional Protocol.

7.2 The Committee will proceed to determine which facts may be considered proven. The authors have been applying for housing since 2008. Their application to the Community of Madrid was rejected because they are occupying a dwelling without legal title while their application to Madrid city council, whose housing stock is limited, is still on a waiting list. Since then, the eviction has been suspended for various reasons.

7.3 The authors claim that their eviction without alternative housing, owing to the refusal of the Community of Madrid to offer them any, would amount to a violation of their right to adequate housing under article 11 (1) of the Covenant. The State party argues that it has provided assistance to the family, to the maximum of its available resources.

7.4 In the light of the facts that the Committee has deemed to be relevant and of the arguments submitted by the parties, the question raised by the communication is whether the eviction order issued against the author and her daughters, which was subsequently suspended, constitutes a violation of the right to adequate housing enshrined in article 11 (1) of the Covenant. To answer this question, the Committee will begin by recalling its jurisprudence on protection against forced eviction. It will then examine the specific case of the author's eviction and address the issues raised in the communication.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights⁵ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.⁶ The right to housing should be ensured to all persons irrespective of income or access to economic

⁴ *López Albán v. Spain*, para. 12.2.

⁵ General comment No. 4 (1991) of the Committee, para. 1.

⁶ *Ibid.*, paras. 7 and 9.

resources⁷ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.⁸

8.2 Forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances.⁹ The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality by weighing up the legitimate objective of the eviction and its consequences for the evicted persons.¹⁰ This obligation flows from the interpretation of the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.¹¹

8.3 Thus, in order for an eviction to be justifiable, it must meet a number of requirements. First, the limitation must be determined by law. Second, it must promote general welfare in a democratic society. Third, it must be suited to the legitimate purpose cited. Fourth, the limitation must be necessary, in the sense that if there is more than one measure that could reasonably be expected to serve the purpose of the limitation, the least restrictive measure must be chosen. Lastly, the benefits of the limitation in promoting general welfare must outweigh the impacts on the enjoyment of the right being limited. The more serious the impact on the author's Covenant rights, the greater the scrutiny that must be given to the grounds invoked for such a limitation. The availability of adequate alternative housing, the personal circumstances of the occupants and their dependants and their cooperation with the authorities in seeking suitable solutions are crucial factors in such an analysis. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.¹² The State party will therefore be committing a violation of the right to adequate housing if it stipulates that a person whose rental contract is terminated must be evicted immediately irrespective of the circumstances in which the eviction order is to be carried out.¹³ The assessment of the proportionality of the measure must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. This authority must analyse whether the eviction is compatible with the Covenant, including with regard to the elements of the proportionality test required by article 4 of the Covenant as described above.¹⁴ Finding an eviction to be an unreasonable measure at a specific moment in time does not necessarily mean that an eviction order cannot be issued against the occupants. However, the principles of reasonableness and proportionality might make it necessary to stay or postpone the eviction order so as to avoid subjecting the evicted persons to situations of indigence or violations of other rights contained in the Covenant. An eviction order may also be dependent on other factors, such as an obligation for the administrative authorities to step in to help the occupants in order to mitigate the consequences of the eviction.¹⁵

8.4 In addition, there must be a real opportunity for genuine prior consultation between the authorities and the persons concerned, there must be no less onerous alternative means or measures available and the persons concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.¹⁶

Duty of States to provide alternative housing to persons if necessary

9.1 Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for

⁷ Ibid., para. 7.

⁸ Ibid., para. 12.

⁹ Ibid., para. 18, and general comment No. 7 (1997) of the Committee, para. 1.

¹⁰ *Ben Džazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 13.4.

¹¹ *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

¹² *López Albán v. Spain*, para. 11.5.

¹³ Ibid., para. 11.7.

¹⁴ Ibid.

¹⁵ Ibid., para. 11.5.

¹⁶ *Ben Džazia and Bellili v. Spain*, para. 15.1.

themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.¹⁷ The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property.¹⁸ In the event that a person is evicted from his or her home without the State party granting or guaranteeing alternative accommodation, the State party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned. The information provided by the State party should enable the Committee to consider the reasonableness of the measures taken in accordance with article 8 (4) of the Optional Protocol.¹⁹

9.2 The obligation to provide alternative housing to evicted persons who need it implies that, under article 2 (1) of the Covenant, States parties must take all necessary steps, to the maximum of their available resources, to uphold this right. States parties may choose a variety of policies to achieve this purpose.²⁰ However, any measures taken should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right²¹ as swiftly and efficiently as possible. Policies on alternative housing in cases of eviction should be commensurate with the state of necessity of those concerned and the urgency of the situation and should respect the dignity of the person.

9.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; a location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected.²²

9.4 In certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative dwelling may be used. However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing.²³ It must also take account of the right of members of a family not to be separated²⁴ and to enjoy a reasonable level of privacy.

Compliance of the eviction order with treaties

10.1 The Committee will consider whether the order to evict the authors constituted a violation of their right to adequate housing. The authors have not claimed that due process guarantees were not observed, and none of the information before the Committee suggests that the process was arbitrary.

¹⁷ General comment No. 7 (1997) of the Committee, para. 16.

¹⁸ *Ben Djazia and Bellili v. Spain*, para. 15.2.

¹⁹ *Ibid.*, para. 15.5. See also the statement by the Committee: An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant ([E/C.12/2007/1](#)).

²⁰ General comment No. 4 (1991) of the Committee, para. 8 (c). See also para. 13.

²¹ General comment No. 3 (1990) of the Committee, para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

²² General comment No. 4 (1991) of the Committee, para. 8.

²³ *López Albán v. Spain*, paras. 9.1–9.4.

²⁴ *Ibid.*, para. 9.3.

10.2 The Committee notes the State party's argument that the Covenant cannot be used to legitimize the occupancy of other people's property as this would violate their right to private property. The Committee recognizes that the State party has a legitimate interest in ensuring protection for all rights established in its legal system so long as this does not conflict with the rights contained in the Covenant.²⁵ As it was established in court that the author had no legal title to the property she was occupying, the Committee considers that there were legitimate reasons for the authors' eviction.

10.3 The Committee notes that the authors have repeatedly requested that their eviction be suspended because of their socioeconomic situation. It also notes that, on several occasions over the past five years, the Court has suspended the eviction on humanitarian grounds and that, in recent years, the Court has suspended the eviction in accordance with legislative measures adopted by the State party in the area of social protection. The Committee also notes the State party's claim that it has taken all necessary measures, to the maximum of its available resources, to ensure the satisfaction of the authors' rights through public resources. These measures include allocating the authors a legally established minimum income support of €834 per month to provide them and their daughters with an adequate standard of living and to meet their needs for food, clothing and adequate housing. The Committee notes that, according to publicly available information, minimum income support is intended to ensure that all citizens can live in dignity.²⁶ The family has also been supported by social services since 2016. The Committee therefore considers that, despite the eviction order issued, the State party's authorities have conducted an examination of reasonableness and proportionality, taking into account the authors' socioeconomic situation and the impact that the eviction would have on their right to housing, and issuing a ruling postponing the eviction in order to avoid subjecting the evicted persons to situations of indigence or violations of other rights contained in the Covenant (see para. 8.3 above).

10.4 However, the Committee recalls that the fulfilment of States parties' obligations to ensure the right to adequate housing is based on two types of substantive obligations. On the one hand, States parties may not deprive individuals and their families of their housing by evicting them or by any other means without providing them with an alternative solution in case of need, and the strict conditions described above must be respected (para. 8 (1) ff.). As has been shown, the State party has not violated this obligation as it has agreed to suspend the eviction in accordance with the Committee's interim measures. On the other hand, States parties have a positive obligation to take appropriate measures to ensure the realization of the right to adequate housing. In accordance with the criteria established in the Committee's general comment No. 4 (1991), the right to housing is defined as the right to live in a home in peace, security and dignity, and includes security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy.²⁷ In the present case, the State party has not demonstrated that it has taken appropriate measures to guarantee the authors' right to housing in accordance with the criteria described. In this connection, the Committee notes that the authors, who are a family with two minor daughters, are in a "state of necessity" – as recognized by a court in 2016 – and have made considerable efforts over several years to make their situation of need known to the State authorities. Although the State has suspended the eviction order, allowing the authors to remain in the occupied dwelling, their continuing occupancy is based on repeated suspensions of an eviction order and is not compatible with the requirement to ensure security of tenure.

10.5 This situation is exacerbated by the requirement set out in article 19 (1) (d) of Decree No. 52/2016, pursuant to which a person occupying a dwelling without the consent of its owner cannot apply for social housing. The Committee recalls that it has already found, in a previous similar communication,²⁸ that this requirement can perpetuate the already precarious situation of persons in need. The Committee found the application of this requirement to be incompatible with the nature of the right to adequate housing. The authors occupied the dwelling without legal title because they were in a state of necessity, as recognized by the Provincial High Court, but they were excluded from any possibility of

²⁵ *Ibid.*, para. 11.5.

²⁶ See <https://www.sanidad.gob.es/ssi/covid19/ingresoMinVital/home.htm>.

²⁷ *A/HRC/43/43*, para. 16 (b).

²⁸ *López Albán v. Spain*, para. 12.2.

applying for social housing. The Committee reiterates its previous recommendation to the State to amend this regulation in order to bring it into line with the Covenant.

10.6 For all these reasons, the Committee considers that, in the present case, the State has violated article 11 (1) of the Covenant.

D. Conclusion and recommendations

11. The Committee, acting pursuant to article 9 (1) of the Optional Protocol, is of the view that the State party violated the authors' right under article 11 (1) of the Covenant. In the light of the Views contained in the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the authors and their daughters

12. The State party has an obligation to provide the authors and their daughters with an effective remedy, in particular: (a) in the event that they do not currently have adequate accommodation, it must reassess their state of necessity and their level of priority on the waiting list, taking into account the length of time that their application for housing has been on file with the Community of Madrid, starting from the date on which they applied, with a view to providing them with public housing or taking some other measure that would enable them to live in adequate housing, bearing in mind the criteria set out in the present Views; (b) providing the authors and their children with financial compensation for the violations suffered; and (c) reimbursing the authors for the legal costs reasonably incurred in submitting this communication, at both the domestic and international levels.

General recommendations

13. The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party has an obligation to:

(a) Ensure that the normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation of their Covenant rights, including persons who are occupying a dwelling without legal title, to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;

(b) Adopt the measures necessary to put an end to the practice of automatically excluding from lists of applicants for housing all persons who find themselves occupying a dwelling without legal title, because they are in a situation of necessity, so that all such persons have equal access to the social housing stock, removing any unreasonable condition that might exclude persons at risk of destitution;

(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 concerned²⁹ and once the State has taken all essential steps, to the maximum of its 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).³⁰ This plan

²⁹ *Ben Djazia and Bellili v. Spain*, para. 21 (c).

³⁰ See also the concluding observations of the Committee on the sixth periodic report of Spain (E/C.12/ESP/CO/6), para. 36.

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.

14. In accordance with article 9 (2) of the Optional Protocol and rule 21 (1) of the rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on any measures taken in follow up to the Views and recommendations of the Committee. The State party is also requested to publish the Views of the Committee and to distribute them widely, in an accessible format, so that they reach all sectors of the population.
