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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. 86/2018*, **

<i>Communication submitted by:</i>	Mohammed Stitou and Mariem Ben Hmdou
<i>Alleged victims:</i>	The authors and their children
<i>State party:</i>	Spain
<i>Date of communication:</i>	28 November 2018 (initial submission)
<i>Date of adoption of decision:</i>	10 October 2022
<i>Subject matter:</i>	Eviction of a family following a foreclosure against the owner of their home
<i>Procedural issues:</i>	Failure to exhaust domestic remedies; failure to sufficiently substantiate allegations
<i>Substantive issue:</i>	The right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Article of the Optional Protocol:</i>	3 (1) and (2) (e)

1.1 The authors of the communication are Mohammed Stitou, a national of Morocco, born on 23 December 1973 in Oujda, Morocco, and Mariem Ben Hmdou, born on 1 February 1980 in Tangier, Morocco. The authors are acting on their own behalf and on behalf of their children N.S., born on 8 December 2000, Y.S., born on 29 March 2003, M.S., born on 2 February 2007, and B.S., born on 19 March 2013, all nationals of Morocco. They claim to be victims of a violation by the State party of their rights under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013.

1.2 On 6 December 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, asked that the State party, as an interim measure, stay the authors' eviction while the communication was being

* 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 and Michael Windfuhr. In accordance with rule 23 of the rules of procedure under the Optional Protocol, Mohammed Amarti and Mikel Mancisidor de la Fuente did not take part in the consideration of the communication.



considered or, alternatively, find them adequate housing by consulting with them in good faith in order to avert any irreparable harm to them.

1.3 In the present decision, the Committee first summarizes the information and the arguments submitted by the parties. It then considers the admissibility of the communication and, lastly, draws its conclusions.

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

Factual background¹

2.1 The authors claim that they had been occupying a dwelling in Badalona since February 2015 under an oral lease with a person pretending to be the property's owner, to whom they were paying €300 each month.

2.2 The authors assert that Court of First Instance No. 5 of Badalona notified them that the dwelling that they occupied was being foreclosed on by a bank to which the dwelling had been awarded under a decree dated 3 April 2014. On 27 March 2015, one of the authors appeared before the Court as a third-party occupant of the dwelling in foreclosure and produced a lease agreement dated 1 June 2014 that had been entered into with the previous owner and carried out.² When they realized that the person to whom they had been paying rent was not the property owner, the authors decided to suspend payment of the monthly rent and to continue occupying the dwelling on an unauthorized basis because they had no alternative housing.

2.3 In its ruling of 29 April 2015, the Court found the lease agreement presented by the author to be null and void, as the lessor had no right to rent out the dwelling that had been awarded to the enforcing creditor under the decree of 3 April 2014. The Court ordered the authors' eviction, which was set for 8 July 2015, after concluding that they had not presented a valid instrument entitling them to occupy the dwelling.

2.4 One of the authors requested free legal aid on 29 May 2015, and the request was granted on 16 June 2015.

2.5 On 3 July 2015, Badalona Social Services asked the Court to postpone the eviction scheduled for 8 July 2015 since there were four minors in the home and the family's monthly income of €426, which came from unemployment benefits, was considered insufficient for them to be able to find alternative housing. The Court granted the postponement and set 7 October 2015 as the new date for the eviction.

2.6 On 16 September 2015, the authors sent the banking institution that owned the property a telegram in which they acknowledged that they were committing the offence of unlawful appropriation and asked the bank for permission to either continue occupying the dwelling in exchange for rent or to occupy another dwelling given their precarious housing situation. There was no response to that request.

2.7 The eviction scheduled for 7 October 2015 was stayed by the Court on 2 October 2015 at the request of the enforcing party, and 13 January 2016 was set as the new eviction date.

2.8 The authors made a request for affordable housing to the Badalona Local Housing Office on 4 December 2015 and asked to be registered as applicants for public housing in Catalonia on 1 December 2015.

2.9 On 4 January 2016, the Court agreed to stay the scheduled eviction because the eviction had not been notified to the parties against whom the foreclosure proceedings had been brought. The Court set 24 February 2016 as the new eviction date, and the authors were personally notified of the decision. Noting the presence of four minors in the home when the notice was given and the request of the enforcing party to stay the eviction scheduled for 24

¹ These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties.

² The authors do not provide an explanation for the inconsistency between this claim and the date and nature of the lease described to the Committee (see para. 2.1).

February 2016, the Court agreed to stay the eviction and informed the authors on 10 June 2016 of the new date set for the eviction, 21 September 2016. On 20 September 2016, the Court again stayed the eviction following a request from the enforcing party. On 4 September 2017, the Court set 1 January 2018 as the new date for the eviction. On 1 January 2018, the officers of the court decided to suspend the eviction while it was in progress upon seeing the four minors in the home and set 31 January 2018 as the new eviction date. The eviction was again stayed at the request of the enforcing party and postponed until 27 June 2018.

2.10 On 25 January 2018, Badalona Social Services sent the Court a social services report that stated that the authors received €1,062 per month under the people's guaranteed minimum income scheme, an amount that would not allow them to find other housing on the private market given the size of their family, with its four children. The social services report indicated that the authors wanted to negotiate a social rental agreement with the owners of the dwelling. Social Services therefore asked the Court to stay the eviction scheduled for 31 January 2018.

2.11 In a document submitted to the Court on 15 June 2018, the enforcing party asked the Court to stay the eviction scheduled for 27 June 2018 for a period of three months so that the authors could take the appropriate steps to find another home. On 21 June 2018, the Court agreed to the stay and set 21 November 2018 as the new eviction date.

2.12 On 21 November 2018, officers of the Court went to the dwelling occupied by the authors to carry out the eviction. The authors indicated at that time that they had not been informed of the scheduled eviction. Because the four minors in the family were at school, the officers agreed not to carry out the eviction and notified the authors that it would be carried out on an open-ended basis, with the assistance of special forces of the Mossos d'Esquadra, the autonomous police of Catalonia. The Court indicated in a case management order that the eviction could take place on any date after 2 January 2019.

2.13 On 26 November 2018, the authors filed a motion for reconsideration with respect to the Court's case management order of 21 November 2018, alleging a violation of article 11 (1) of the Covenant and reporting that they had submitted an individual communication to the Committee.

After registration of the communication

2.14 On 6 December 2018, the Committee, acting through its working group on communications, registered the communication and asked the State party to stay the authors' eviction while the communication was being considered. In an order of 8 January 2019, Court of First Instance No. 5 of Badalona denied the authors' request, made in light of the interim measures sought by the Committee, that the eviction be stayed as a precautionary measure on the grounds that the Committees' views were not binding.

2.15 The authors were evicted on 7 February 2019 and slept in a borrowed car the following days. They subsequently resumed their occupation of the same dwelling. One of the authors was employed from 31 January to 30 June 2019.

2.16 On 11 March 2019, the authors submitted an application to the Badalona Emergency Housing Board. The application was rejected on 2 April 2019 because the authors did not meet the requirement of being at risk of losing their housing or facing legal eviction.³

Complaint

3. The authors claim that their eviction from the dwelling that they occupy, without adequate alternative housing, would constitute a violation of their right to adequate housing under article 11 (1) of the Covenant. The authors claim that the eviction order did not take into account their situation of vulnerability and the fact that there were minor children in the family.

³ Regulations of the Badalona Economic and Social Emergency Assessment Board, art. 4 (a) (in Catalan only).

State party's observations on admissibility and the merits

4.1 On 15 October 2019, the State party submitted its observations on the admissibility and merits of the communication.

4.2 Regarding the facts presented by the authors, the State party states that, after the eviction was stayed a first time on 8 July 2015, ten other eviction dates were set. After ten court-ordered stays, the eviction was carried out on 7 February 2019. The State party affirms that the interim measures requested by the authors in their communication are therefore not warranted at the present time.

4.3 With respect to admissibility, the State party points out that the authors asked to be registered as applicants for public housing in Badalona months after their appearance before the Court and their first request for a stay of eviction. In addition, one of the authors submitted an application for social housing to the Economic and Social Emergency Assessment Board on 11 March 2019, five months after the submission of the individual communication to the Committee. The State party is of the view that the communication should consequently be declared inadmissible for failure to exhaust domestic remedies.

4.4 With regard to the merits of the communication, the State party points out that the family's needs are covered from public resources in the areas of health and education and in terms of basic income, free access to justice and access to free or subsidized goods. In particular, the State party points out that Badalona Social Services have been assisting the family since 2007 through various forms of financial assistance provided by Badalona City Council and Caritas to help them meet their food needs. The appropriate steps were also taken to help one of the authors resume receipt of payments under the people's guaranteed minimum income scheme.

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 there 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,⁴ 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 of the statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,⁵ 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 Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land to prevent speculation in the interest of the common good. The State party is therefore in full compliance with its international obligations with respect to this right, which is to be realized progressively.

4.6 Following the same reasoning on the nature of the State party's obligations under article 11 (1) of the Covenant, the State party considers that the extent to which it has complied with these obligations should be assessed in the light of three parameters: (a) the minimum resources that a person requires to obtain access to private-sector housing; (b) the number of persons below this threshold; and (c) the funds made available in the budget to cover the needs identified. It is therefore necessary to assess whether the State party uses all the financial resources at its disposal to cover these needs and, if its resources are insufficient

⁴ *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria SA*, C-539/14, order of 16 July 2015, para. 49.

⁵ Judgments No. 152/1988 of 20 July 1988, *Boletín Oficial del Estado*, No. 203; No. 7/2010 of 27 April 2010, *Boletín Oficial del Estado*, No. 129; and No. 32/2019 of 28 February 2019, *Boletín Oficial del Estado*, No. 73.

for this purpose, whether its limited resources have been applied in accordance with objective and non-discriminatory criteria and in order of need. The same reasoning is used by the Committee in its general comment No. 7 (1997), in which it considers that, in the event that a lawful eviction results in homelessness, the State party concerned “must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing ... is available” (para. 16).

4.7 If this reasoning on the scope of the right to adequate housing is applied to the present case, the State party believes that the authors would need to demonstrate the following in order for a violation of the Covenant to be found: (a) that they are in a situation of need; (b) that the authorities have not set aside the maximum available resources; (c) that, if the resources have been set aside to the greatest extent possible but not all needs have been met, the resources have not been allocated on the basis of rational and objective criteria; and (d) that the authors have not voluntarily and knowingly placed themselves in the situation to which they are objecting and that prevents them from obtaining available public assistance.

4.8 The State party details 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 withdrawing from 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 prevent emergencies arising from legitimate evictions being carried out before the persons concerned find permanent housing, Royal Decree-Law No. 7/2019 establishes a mechanism whereby the eviction of vulnerable persons may be suspended for one month if the owner is a private individual or three months if the owner is a legal entity. In addition, municipal social services are responsible for assessing and following up on the needs of families, addressing temporary housing emergencies and working in coordination with the relevant autonomous communities to facilitate an orderly transition to the emergency housing regime. In this regard, the State party points to the Social Services Act (No. 12/2007 of 11 October 2007), article 30, on emergency social benefits, of the Economic Social Benefits Act (No. 13/2006 of 27 July 2006) and Decree No. 142/2010 of 11 October 2010, by which the 2010–2011 social services portfolio of the government of Catalonia was approved. The State party has also taken steps to promote the maintenance of a sufficient stock of public housing by adopting urban planning legislation which provides 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 applicants’ need for social housing and allocating housing units.

4.9 The State party emphasizes that, in the present case: (a) the authors are in their current situation because they did not apply for social housing through the channels established under the law until months after they were informed about the judicial proceedings; (b) State, regional and local authorities have not violated article 11 (1) of the Covenant, as the authors have received various forms of financial assistance, one of the authors received €1,112 per month under the people’s guaranteed minimum income scheme and was employed for six months with a high enough income to find rental housing on the private market and, furthermore, the authors’ eviction was stayed nine times by the courts; and (c) according to the social services report by Badalona Social Services, the authors resumed their occupation of the same dwelling without valid, legal authorization – clearly acting improperly in light of all the measures to address their situation. The State party argues that the Committee cannot accept situations, such as the one in the present case, where individuals take the enforcement of rights into their own hands, nor can it accept the authors’ failure to provide this last piece of information. The State party therefore requests that the Committee declare the communication inadmissible or, in the alternative, dismiss it on the merits.

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

5. In their comments of 20 December 2021, the authors informed the Committee that the family's monthly income had decreased slightly and was at that time €925 euros.⁶ The authors had registered with the unemployment office and took training courses. One of the authors was able to find work through the Municipal Employment Promotion Institute of Badalona. The authors are working towards registration with the Badalona Emergency Housing Board once the obstacles have been removed.⁷

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 rules of procedure under the Optional Protocol, whether the communication is admissible.

6.2 The Committee notes the State party's assertion that the communication should be declared inadmissible for failure to exhaust domestic remedies, considering that the authors applied for social housing months after their appearance in court and submitted their application for housing to the Economic and Social Emergency Assessment Board five months after the submission of the individual communication to the Committee. The Committee notes that the authors have been in contact with Social Services since 2007 and that they have filed several applications with the Badalona Local Housing Office since 2011, including an application for a rent subsidy in 2011, which was not granted. The Committee also notes that the authors submitted applications to the Badalona Local Housing Office in December 2015, in the context of the eviction proceedings, for affordable rental housing and public housing and, in 2019, for emergency social housing. The Committee therefore considers that the authors have exercised due diligence in seeking assistance from the administrative authorities to find alternative housing, which is a requirement both for the exhaustion of available domestic remedies under article 3 (1) of the Optional Protocol and for the substantiation of the authors' complaint under article 11 (1) of the Covenant and article 3 (2) (e) of the Optional Protocol.⁸

6.3 Pursuant to article 3 (2) (e) of the Optional Protocol, the Committee shall declare a communication inadmissible when it is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media. The Committee notes the State party's claims that the authors received various forms of assistance, including €1,112 per month under the people's guaranteed minimum income scheme and that one of the authors was employed for six months with a high enough income to find rental housing on the private market. The Committee also notes the State party's assertion that the authors clearly acted improperly in resuming their occupation of the dwelling from which they had been evicted without valid authorization and without informing the Committee of that development, and in view of the fact that their eviction had been stayed several times. The Committee notes that the authors did not respond to these claims and have not provided proof either of their income at the time of the eviction or of their current income. The Committee also notes that the authors have not provided any details about their living arrangements after the eviction and have reported neither that they resumed their occupation of the same dwelling from which they were evicted nor that their income had perhaps changed after the period of employment of several months of one of the authors.

6.4 The authors have also failed to provide documentation showing that, as a result of the eviction, they have been deprived of their right to adequate housing – for example, by having been made homeless or finding themselves in a dwelling that does not meet the minimum requirements for housing suited to their needs and those of their children. The Committee

⁶ The authors do not provide evidence corroborating the claimed monthly income.

⁷ The authors do not specify what obstacles they have faced in registering with the Badalona Emergency Housing Board.

⁸ *Sariego Rodríguez and Dincă v. Spain* (E/C.12/70/D/92/2019), para. 7.4; *Muñoz García v. Spain* (E/C.12/71/D/39/2018), para. 6.4; and *Llor Chila v. Spain* (E/C.12/70/D/102/2019), para. 6.4.

recalls⁹ that authors have a duty first to substantiate their claims and provide the relevant documentation. The Committee understands that communications are sometimes submitted by persons who are not represented by lawyers or jurists trained in international human rights law. The Committee must therefore, in accordance with the victim-centred approach, 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.¹⁰ In the present case, the Committee notes that there is a discrepancy in the information regarding the authors' rental agreement, which was said in the initial submission to have been entered into orally in February 2015 but is referred to in the court records provided by the State party as a written agreement entered into in June 2014. The Committee notes that the authors have also failed to respond to any of the State party's claims regarding their current living arrangements and income level. The Committee therefore considers that the authors have not satisfactorily substantiated a situation of need arising from a lack of sufficient income to access the private housing market. The authors have also failed to explain where they have been living since the eviction or in what way their access to adequate housing has been impaired as a result of the eviction. Accordingly, having examined the information provided by the authors, and in the absence of a clear account of the relevant facts in the case file for the present communication, the Committee considers that it does not have sufficient evidence before it to determine whether, in the present case, the right of the authors and their children to adequate housing has been impaired. The Committee therefore finds that, in respect of the claim of a violation of article 11 (1) of the Covenant, the communication is insufficiently substantiated for the purposes of admissibility and is inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

6.5 The Committee recalls that, even where a communication appears *prima facie* to be admissible because the initial submission is sufficiently substantiated for purposes of registration, nothing prevents the Committee from concluding, after further examination and on the basis of the information on admissibility provided by both parties, that the communication is inadmissible for want of sufficient substantiation.¹¹

C. Conclusion

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 (2) (e) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the authors.

⁹ *A.M.O. and J.M.U. v. Spain* (E/C.12/68/D/45/2018), para. 10.3; *Arellano Medina v. Ecuador* (E/C.12/63/D/7/2015), para. 8.10; *Martínez Fernández v. Spain* (E/C.12/64/D/19/2016), paras. 6.4 and 6.5; *S.S.R. v. Spain* (E/C.12/66/D/51/2018), para. 6.4; and *Loor Chila v. Spain*, para. 6.6.

¹⁰ *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.15; and *S.S.R. v. Spain*, para. 6.4.

¹¹ *Loor Chila v. Spain*, para. 7.2; and *S.S.R. v. Spain*, para. 7.9.