



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### **Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 56/2018\*\***

<i>Communication submitted by:</i>	Asmae Taghzouti Ezquihel
<i>Alleged victims:</i>	The author and her children
<i>State party:</i>	Spain
<i>Date of communication:</i>	21 September 2018 (initial submission)
<i>Date of adoption of decision:</i>	22 February 2021
<i>Subject matter:</i>	Eviction of the author from her home
<i>Procedural issues:</i>	Sufficient substantiation of claims
<i>Substantive issues:</i>	Right to adequate housing
<i>Articles of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	3 (2) (e) and (f)

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\* Reissued for technical reasons on 5 May 2021.

\*\* Adopted by the Committee at its sixty-ninth session (15 February–5 March 2021).



1.1 The author of the communication is Asmae Taghzouti Ezqouihei, a Spanish citizen born on 21 May 1982. The author is acting on her own behalf and on behalf of her children, born on 19 October 2006 and 30 September 2019. 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 not represented by counsel.

1.2 On 21 September 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 daughter.<sup>1</sup>

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 and merits of the communication and, lastly, set out its conclusions and recommendations.

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

### **The facts as submitted by the author<sup>2</sup>**

#### *Before the registration of the communication*

2.1 In 2014, after relinquishing ownership of her previous home, on which the author and her ex-husband had taken out a mortgage, and faced with “the authorities’ failure to provide a solution”, the author found it necessary to occupy, with the help of third parties, her current dwelling, which is owned by a bank. With the assistance of a court-appointed lawyer, she attempted to negotiate a social rental contract with the financial institution; however, all mediation efforts proved fruitless.

2.2 On 16 June 2015, Court of First Instance No. 5 of Badalona handed down judgment No. 99/2015 upholding the eviction action brought against the author on the grounds of illegal occupation. On 11 September 2017, the owner of the property filed for enforcement of the judgment.

2.3 On 15 January 2018, Court of First Instance No. 5 of Badalona ordered the enforcement of judgment No. 99/2015. On the same day, the Court issued a decree requesting the author to surrender the dwelling to its owner. The Court informed her that if she did not leave the property voluntarily, she would be evicted on 16 May 2018.

2.4 The author explains that the eviction scheduled for 16 May 2018 was suspended because of a gathering of protesters. On the same day, Court of First Instance No. 5 of Badalona set 26 September 2018 as the new date for the eviction.

2.5 In June 2018, the housing emergencies team of Badalona City Council sent a report on the author’s situation to the Council’s emergency committee with a view to ensuring that it evaluated her need for access to housing.

2.6 On 10 July 2018, the author applied to the employment counselling service of the Autonomous Community of Catalonia for a guaranteed minimum income and, having submitted an employment plan, was granted a supplementary benefit on 23 July 2018.

2.7 On 14 September 2018, the author registered with the Badalona local housing office as an applicant for emergency housing.

2.8 On 21 September 2018, the author applied to Court of First Instance No. 5 of Badalona for the suspension of the eviction proceedings.

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<sup>1</sup> The author’s son was born after the submission of the communication.

<sup>2</sup> 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 its merits.

*After the registration of the communication*

2.9 On 21 September 2018, the Committee registered the communication and requested the State party to take interim measures to avoid possible irreparable harm to the author and her daughter, a minor, while the case was being considered by the Committee, including by suspending the eviction or by providing alternative housing appropriate to their needs, in genuine and effective consultation with the author.

2.10 On 25 September 2018, Court of First Instance No. 5 of Badalona agreed to suspend the eviction until 14 November 2018. On 3 October 2018, the author applied for a further suspension of the eviction. On 18 October, the Court agreed to a suspension and set a new date of 24 April 2019 for the eviction.

2.11 On 17 April 2019, the Committee reiterated its request to the State party to take interim measures to avoid possible irreparable harm to the author and her daughter while the case was being considered by the Committee. On 18 April 2019, the author again applied for a suspension of the eviction. Court of First Instance No. 5 of Badalona rejected the application on 18 June 2019. On 14 September 2020, the bank requested that the Court indicate a date on which it might proceed with the author's eviction.

2.12 The author asserts that if the Committee does not intervene, her family will have no option but to live on the streets and that the State party will "with European funds" take her children from her. She points out that the bank that previously owned the property sold it to a fund that is a large owner of residential property and that there has been no indication of a new eviction date.

**The complaint**

3.1 The author claims that being evicted would constitute a violation of article 11 (1) of the Covenant because she has no adequate alternative housing. She maintains that the State party has not taken the necessary steps, to the maximum of its available resources, to spare her family the indignity of living on the streets. She claims that the human perspective has been completely overlooked and that she and her children, who have been forced to "break the law in order to survive", are the real victims.

3.2 According to the author, the social service authorities claim to be unable to help her and have not offered her any decent alternative housing. She reports that her current income is such that she is unable to sign a contract for the rental or purchase of housing on the open market, even in localities that are far from her current place of residence. She claims that this situation of "fear and uncertainty" may have caused her to miscarry when she was two months pregnant.

3.3 The author indicates that she is currently unemployed and that she received an unemployment benefit of €580 per month until September 2019. According to a report of 19 April 2018 by the Badalona City Council social services, the author and her daughter are in distress. Another report by the City Council, dated 4 September 2018, states that the family runs the risk of being "excluded from housing", as its income is less than 0.89 times the poverty threshold, and that the family should therefore be allocated housing at a rent not exceeding 10 per cent of its total income.

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

4.1 In its observations of 25 April 2019, the State party requests the Committee to find the communication inadmissible or, alternatively, to find that none of the facts of the case constitutes a violation of the Covenant.

4.2 The State party indicates that on 14 September 2018, the author was registered, at her own request, as an applicant for emergency social housing in Badalona. It notes that the Ministry of Labour and Social Affairs recognizes her as a recipient of unemployment benefit. It claims that the author's communication is devoid of reasoned argument.

4.3 The State party considers that the communication should be declared inadmissible under article 3 (1) of the Optional Protocol, as domestic remedies have not been exhausted, and under article 3 (2) (f), as the right to submit a communication has been abused. The State

party emphasizes that although the author had known since 2015 that she would have to leave the dwelling, she seems to have made her first application for emergency housing to Badalona City Council only after the enforcement of the judgment was ordered in January 2018, years after the legal proceedings commenced. The State party notes that the author registered as an applicant for emergency housing on 14 September 2018, only four days before submitting the communication to the Committee. It also underlines that there is no record of her having applied for public housing from the Autonomous Community, which is the competent authority in this area.

4.4 The State party is of the view that the author has not exhausted domestic remedies; if she objected to the delay in the allocation of emergency housing by the City Council, she should have lodged an administrative appeal and subsequent judicial appeals instead of consenting to be included on the public housing waiting list. The State party notes that the author claims not that it violated her rights in a judicial process but that it failed to act in accordance with article 11 of the Covenant, a failure that, in the State party's view, it would be responsible for if it had refused to provide social housing or had made it available with a delay.

4.5 On the merits of the communication, the State party submits that the basic needs of the author's family, except that of accommodation, have been met using public resources: free access to public health services; free access to the public education system for the author's daughter; access to a guaranteed minimum income system and the right to free legal aid. With regard to her need for accommodation, the State party reiterates that the author has not submitted any applications for public housing other than the application for emergency social housing.

4.6 The State party believes that article 11 of the Covenant does not apply to persons who are illegally occupying somebody else's property. The individual and collective right to own property is enshrined in article 17 of the Universal Declaration of Human Rights and article 33 of the Spanish Constitution. Property is internationally recognized as a fundamental human right that allows owners to meet their basic needs, and for that reason it is necessary to ensure that there is protection from arbitrary seizure of property. In its general comment No. 7 (1997) on forced evictions, the Committee thus recognizes that evictions may be appropriate in certain cases, including that of the occupation of somebody else's property, although they must be carried out in accordance with the law, with adequate legal remedies available to those affected, in a timely manner and in the presence of competent officials.

4.7 The State party argues that the right to housing is neither an absolute right to a particular dwelling owned by another person nor an absolute right to be provided with housing by the authorities, if public resources are insufficient for that purpose. 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.<sup>3</sup> 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,<sup>4</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 to prevent, for the common good, speculation. This right, which is to be realized progressively, is thus fully protected by the State party in line with its international obligations. The State party refers to the arguments

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<sup>3</sup> Court of Justice of the European Union, *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria S.A.*, Case C-539/14, Order, 16 July 2015, para. 49.

<sup>4</sup> Constitutional Court judgments No. 152/1988, No. 7/2010 and No. 33/2019.

set forth in similar communications concerning the efforts undertaken in the sphere of housing.

4.8 The State party points out that the local social service authorities are responsible for assessing and monitoring families' needs and for dealing with temporary housing emergencies in coordination with the relevant autonomous communities. In this case, Catalonia has specific applicable legislation: the Social Services Act (No. 12/2007 of 11 October 2007) and the Economic Social Benefits Act (No. 13/2006 of 27 July 2006). The State party highlights article 30 of the latter, which stipulates, *inter alia*, that "emergency benefits are intended to meet specific, urgent and basic subsistence needs, such as food, clothing and accommodation" (para. 1), and that "social emergencies are assessed by the primary social services and priority is given to persons or families with dependent children" (para. 3).

4.9 The State party reiterates that municipal and regional social services, using objective criteria, evaluate and monitor people in need in a way that guarantees orderly access to public housing. A scoring scale, informed by the results of that work, is used to allocate housing in order of need. The State party stresses that since needs may sometimes exceed public resources, the right that interested parties may invoke before the courts is not the right to a specific dwelling but the right to have their needs adequately assessed and fulfilled as soon as the available public resources permit.

4.10 The State party concludes that in the present case, the author, without having applied for social housing, unlawfully occupied somebody else's property. The State party explains that this illegal occupation is not covered by article 11 (1) of the Covenant, that it has lasted for more than four years and that it has caused specific harm to the owner. It argues that the State, regional and local authorities have not violated article 11 (1) because the judicial authorities informed the City Council that the author might find herself in need at the time of her lawful eviction and postponed the date on which the eviction was originally scheduled to take place by several months; because the local authorities assessed the author's situation; and because that situation is largely of the author's own making – she occupied a dwelling that was not her own and did not apply for social housing through the legally established channels until 2018. The State party is of the view that none of the facts of the case constitutes a violation of the Covenant.

#### **Author's comments on admissibility and the merits**

5.1 In her comments of 14 September 2020, the author notes that, as indicated by the State party, her family qualifies for public or alternative housing under the State party's laws. She reiterates that her family's income is insufficient. She receives only €530 a month: €430 in benefits and an advance social security payment of €100 to compensate for the non-payment of maintenance by her ex-husband. She explains that it is impossible for her even to rent a room, as children are not accepted.

5.2 The author states that she has registered with the National Employment Institute in order to find work and attend training courses and thus improve her family's living conditions.

5.3 She submits that she has completed all the necessary formalities to secure public or alternative housing and that her family is registered with what she refers to as "public housing/the emergency committee/affordable 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 9 of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 The Committee notes the State party's claims that the communication constitutes an abuse of the right of submission and should be considered inadmissible under article 3 (2) (f), as the author was not diligent in applying for social housing. The State party notes that: (a) the author did not apply for social housing prior to the illegal occupation of the dwelling beginning in 2014; (b) although she had known since June 2015 that she would have to leave,

she appears to have applied to Badalona City Council for emergency housing for the first time only in September 2018, after the eviction was ordered and four days before submitting the communication to the Committee; (c) there is no record of her having applied for public housing to the Autonomous Community, which is the competent authority in this area; and (d) if she objected to the delay in the allocation of emergency housing, she should have lodged an administrative appeal and subsequent judicial appeals.

6.3 The Committee takes note of the State party's argument that the author applied to Badalona City Council for emergency housing only on 14 September 2018, four years after moving into the dwelling, more than three years after the judgment ordering her eviction was handed down and only four days before submitting the communication to the Committee. In this regard, the Committee is of the view that the author's lack of due diligence in applying to the domestic administrative authorities to ensure her access to alternative housing does not, in itself, constitute an abuse of the right to submit a communication for the purposes of article 3 (2) (f) of the Optional Protocol. However, due diligence or lack thereof is an important element in substantiating the claim that the State party has failed to fulfil its obligations under article 11 (1) of the Covenant.

6.4 The Committee notes that States parties have a positive obligation under article 2 (1) of the Covenant to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means. The Committee recalls, however, that States parties may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant, as provided for in article 8 (4) of the Optional Protocol. The Committee therefore recognizes that States parties may establish administrative channels to facilitate the protection of the right to housing, including by requiring individuals to undertake certain administrative procedures to notify the authorities of their need for assistance in the protection of their right to housing. These formalities should not impose an excessive or unnecessary burden on individuals and should not have a discriminatory effect.

6.5 The Committee notes that the author has not provided any justification for her failure to apply for emergency housing earlier, considering that she has occupied her home illegally since 2014 and that judgment No. 99/2015 ordering the eviction was handed down on 16 June 2015. Nor has the author argued that the requirements for applying for emergency housing were excessive or unnecessary or that they had a discriminatory effect.

6.6 The Committee also takes note of the State party's argument that there is no record of the author having submitted an application for social housing to the relevant service of the Autonomous Community of Catalonia. The Committee notes that the author has not provided any information justifying her failure to make such an application or demonstrated that such a remedy was unavailable or entailed requirements that were excessive, unnecessary or discriminatory. Given the circumstances of the present case – namely, the author's illegal occupation of the dwelling since 2014 and the several years over which she could have applied for social housing – the Committee is of the opinion that the author has not sufficiently substantiated her claim that the State party failed to meet its obligations under article 11 (1) of the Covenant. The Committee is therefore of the view that the author has not sufficiently substantiated her claim and that the present communication is inadmissible under article 3 (2) (e) of the Optional Protocol.

## C. Conclusion

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

8. The Committee 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.