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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. 54/2018*

<i>Communication submitted by:</i>	Fátima El Ayoubi and Mohamed El Azouan Azouz
<i>Alleged victims:</i>	The authors and their young son
<i>State party:</i>	Spain
<i>Date of communication:</i>	17 September 2018
<i>Date of adoption of Views:</i>	19 February 2021
<i>Subject matter:</i>	Eviction due to illegal occupation
<i>Procedural issues:</i>	Failure to exhaust domestic remedies
<i>Substantive issues:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Article of the Optional Protocol:</i>	3 (1)

* Adopted by the Committee during its sixty-ninth session (15 February to 5 March 2021).



1.1 The authors of the communication are Fátima El Ayoubi, a Moroccan citizen born on 1 January 1983, and Mohamed El Azouan Azouz, a Spanish citizen born on 2 May 1972. They are acting on their own behalf and on behalf of their young son, Haron El Azouan El Ayoubi, born on 30 November 2013. The authors claim that they are victims of a violation of their rights under article 11 (1) of the Covenant because they are subject to an order for their eviction from the property in which they have been living since 2016 and do not have alternative accommodation. The Optional Protocol entered into force for the State party on 5 May 2013. The authors are not represented.

1.2 Acting through its working group on communications, the Committee registered the communication on 19 September 2018 and, noting the imminence of the eviction and the claimed lack of alternative accommodation and risk of irreparable harm, requested the State party to stay the authors' eviction while the communication was being considered or, alternatively, to find adequate accommodation, consulting with them in good faith in order to prevent irreparable harm to the authors and their children.

1.3 In the present Views, 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 background

Before registration of the communication

2.1 Between 2003 and 2007, Mr. El Azouan Azouz was living in social housing that he had been allocated under the Madrid regional government's Young Persons' Housing Plan. However, at the beginning of 2007, he lost his job due to the economic crisis and was no longer able to pay his rent. For this reason he was evicted from this housing in 2008 and was forced to move back to the home of his parents, who had themselves been allocated social housing by the Madrid Housing Authority in 2007. In 2012, Mr. El Azouan Azouz met Ms. El Ayoubi. He lived with her at his parents' home until 2013, when his parents were evicted because the Madrid regional government had sold the property in which they were living to an investment fund.

2.2 On 30 November 2013, the authors' son, Haron El Azouan El Ayoubi, was born. He has had serious health problems since birth, owing to a developmental delay.¹

2.3 The authors did not have the option of renting a home because their income was insufficient, given that Mr. El Azouan Azouz was unemployed and Ms. El Ayoubi was unable to work because her son's health problems meant she had to devote herself entirely to his care. Thus, in December 2016, they decided to move into a dilapidated apartment in El Álamo, a municipality on the outskirts of Madrid. The authors report that this apartment, which is owned by a bank, had been empty for more than seven years. With the help of friends and family, the authors did up the apartment to make it habitable.

2.4 On 14 February 2017, the authors applied to Madrid regional government's housing department for special needs housing. However, they claim never to have received a reply.

2.5 The authors indicate that, on 24 May 2016, and again on 12 January 2017, they requested a minimum income allowance due to their precarious financial and employment situation.² On an unspecified date, Ms. El Ayoubi was recognized as her son's principal carer and was awarded financial assistance of €268.79 per month.³ After a long period of unemployment, on 7 March 2018 Mr. El Azouan Azouz got a job as a bricklayer, with a

¹ The authors provide an optional expert opinion, issued by the Directorate General of Social Services of Madrid regional government on 22 September 2019, which indicates that Haron El Azouan El Ayoubi has an overall degree of disability of 33 per cent.

² The authors provide no detail of the authorities' response to these requests.

³ This information is contained in a report issued by the social services department of El Álamo local government authority on 31 July 2018.

monthly wage of €940. The authors explain that this was a temporary job offering little stability as it would end when the construction work was completed. In addition, on 28 September 2017, due to their son's health problems, the authors applied for recognition of his condition of extreme dependence, which the competent authorities duly granted. Consequently, on 1 July 2018, Haron El Azouan El Ayoubi was awarded a place in an early care and rehabilitation centre.

2.6 On 21 June 2016, the bank that owned the property initiated a civil court procedure seeking an order for eviction on grounds of illegal occupancy⁴ with a view to recovering possession of the apartment in which the authors live. On 1 March 2017, Navalcarnero Examining Court of First Instance No. 3 issued a judgment ordering Ms. El Ayoubi "and unknown occupants of (address of the authors' home)" to vacate the property in question. The Court ruled that Ms. El Ayoubi was occupying the apartment illegally as she did not have an occupancy agreement. It also ruled that Ms. El Ayoubi's explanations of their situation of need, which she attributed to their precarious financial situation and the health of their son, did not constitute a valid reason for illegally occupying the property. On 15 March 2017, the authors appealed the judgment before Madrid Provincial Civil Court, which upheld the first-instance judgment in its entirety on 4 October 2017, reiterating the arguments put forward by the first-instance court.

2.7 On 7 June 2017, the bank applied for provisional enforcement of the judgment, requesting the authors' immediate eviction. The authors opposed enforcement of the judgment, citing the family's precarious situation. On 14 December 2017, Navalcarnero Examining Court of First Instance No. 3 upheld the bank's application and set an eviction date of 2 March 2018.

2.8 On 2 March 2018, the competent authorities went to the authors' home to carry out the eviction. The authors claim they were unaware that the order was due to be executed. The eviction scheduled for this date did not take place and the authors were given a maximum of 10 days to vacate the property, owing to their son's needs and the harsh weather.

2.9 On 6 March 2018, the authors filed a written request for a stay of eviction with Navalcarnero Examining Court of First Instance No. 3. They stated that they had insufficient income to rent a home, that their son had a degree of disability of 33 per cent and various illnesses, and that, for these reasons, because they had no place to live they had decided to move into an apartment that had been unoccupied for several years. The authors also stated that social services were monitoring their situation, and could attest to their readiness to find employment. They made reference to the State party's constitutional and international obligations regarding the right to housing, which it had failed to fulfil because of public policies that have given economic interests precedence over the right to housing,⁵ and have included selling social housing to banks and "obstructing" legislation designed to protect the right to housing, this latter point being an allusion to the Constitutional Court decision to stay attempts to improve housing laws led by the Autonomous Communities. The bank that owns the property opposed the stay of eviction, arguing that the authors' request should be dismissed as these are political issues unrelated to the enforcement of a judgment for unlawful occupation of property.

2.10 On 4 June 2018, Navalcarnero Examining Court of First Instance No. 3 dismissed the request for a stay of eviction, ruling that the arguments put forward by the authors could not be invoked in "a procedure of this type", and set a new eviction date of 21 September 2018.

2.11 On 31 July 2018, the authors again applied to Navalcarnero Examining Court of First Instance No. 3 for a stay of eviction on grounds of the family's precarious situation, which they attributed to their very limited financial means and the impossibility of obtaining

⁴ This is a procedure initiated by the owner, usufructuary or any other person with the right to occupy a property, when the property is being occupied or used by another without payment of rent. The squatter has either no legal occupancy agreement, or else an agreement that is null and void or has expired, and is not paying rent or any other consideration. The procedure is conducted orally (art. 250.1.2 of the Civil Procedure Act).

⁵ The authors cite *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015) and the Supreme Court judgment of 23 November 2017 on entering homes and proportionality tests.

housing on the open market owing to high rental prices and the health problems of their son. The authors also referred to the competent authorities' failure to respond to their applications for social housing.

2.12 On 7 September 2018, Navalcarnero Examining Court of First Instance No. 3 acknowledged receipt of the authors' application and ordered that it be added to the file. However, it stated that the eviction proceedings scheduled for 21 September 2018 would still go ahead.

2.13 The authors state that, on 17 September 2018, they asked the bank that owns the apartment about the possibility of negotiating a social rental agreement, but that they have received no reply.

After registration of the communication

2.14 On 19 September 2018, acting through its working group on communications, the Committee registered the communication and requested the State party to take interim measures to prevent possible irreparable harm to the authors and their young son while the case was being considered by the Committee, either by staying the eviction or finding alternative accommodation suited to their needs by means of a constructive dialogue, in good faith, with the authors.

2.15 On the same date, the authors informed Navalcarnero Examining Court of First Instance No. 3 that their communication had been registered with the Committee and that the Committee had requested interim measures. The Court ordered that the authors' written request be added to the file, but upheld the eviction order for 21 September 2018. However, the eviction scheduled for this date was stayed by the Court by order of 20 September 2018, because the representative of the bank that owns the apartment had requested a provisional stay of eviction owing to the authors' situation and to give them time to find alternative accommodation.

2.16 On 21 March 2019, Navalcarnero Examining Court of First Instance No. 3 set a new eviction date of 31 May 2019. On 23 May 2019, the authors informed the Committee that their situation had not changed and that they still had no alternative accommodation. In addition, they reported that Ms. El Ayoubi was pregnant and about to give birth.⁶ On the same date, the Committee reminded the State party that, unless the State party is informed that the Committee has decided to lift the interim measures, they remain in force for the time that the case is being considered by the Committee and until the Committee informs the State party of its decision. The Committee reiterated its decision of 19 September 2018 to grant interim measures, requesting the State party either to stay the authors' eviction from the property in which they are currently living while the communication is being considered by the Committee or to find them adequate alternative housing in effective consultation with them, in good faith.

2.17 On 11 June 2019, the authors' second child was born.

2.18 The eviction scheduled for 31 May 2019 was stayed. The authors report that, on 31 August 2020, Navalcarnero Examining Court of First Instance No. 3 set a new eviction date of 13 January 2021.

2.19 The authors also report that Mr. El Azouan Azouz worked until the end of 2019, when his contract ended. He received an unemployment allowance until August 2020 and his applications for unemployment benefit and minimum income support are under consideration. The authors add that Ms. El Ayoubi continues to receive an allowance of €268.79 per month as her son's principal carer.

The complaint

3. The authors claim that, in the absence of alternative accommodation, and since their limited income makes it impossible for them to access private housing, their eviction from

⁶ The authors provide a medical certificate issued on 19 March 2019, which confirms Ms. El Ayoubi's pregnancy.

the apartment in which they are currently living would violate their rights under article 11 of the Covenant.

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

4.1 On 27 March 2019, the State party asked for the interim measures to be lifted. The Committee refused the request on 31 October 2019. The State party reports that the eviction order scheduled for 21 September 2018 has been stayed, without any new eviction date having been set.

4.2 The State party also reports that, in follow-up to the authors' request for special needs housing, which was submitted on 14 February 2017, the Directorate General for Housing and Rehabilitation asked them for certain documents needed to complete their application. However, the authors failed to produce the required documents before the deadline set in Decree No. 52/2016⁷ despite having been notified by mail and by means of the Official Gazette dated 11 October 2017. Accordingly, on 31 January 2019, the Directorate General for Housing and Rehabilitation decided to close the authors' application for housing.

4.3 The State party concludes that, since the eviction order is intended to protect the legitimate owner of the property occupied by the authors, who is facing serious detriment owing to the stay of eviction, and given that the authors have shown no interest in obtaining nor made any effort to obtain alternative accommodation, to the extent that they failed to provide the documents required by the Directorate General for Housing and Rehabilitation, the interim measures should be lifted and the communication discontinued.

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

5.1 On 23 May 2019, the authors reported that, since they are not homeless, they are not entitled to apply to Madrid regional government for special needs housing. An essential prerequisite for such applications is that none of the members of the family unit currently have a home to live in.⁸ It was thus impossible for the authors to produce the documentation required by the Directorate General for Housing and Rehabilitation.

5.2 As for their particular circumstances, the authors recalled that they have no alternative accommodation and claim that, although Mr. El Azouan Azouz had been receiving a salary of €940 per month since March 2018, these amounts were insufficient to allow them to rent on the private market.

5.3 The authors also provided a report issued by El Álamo social services department which states that the authors have demonstrated an interest in finding alternative accommodation and that, since their application for housing was closed because their situation as squatters occupying a property illegally is incompatible with the relevant legislation (Decree No. 19/2006), it is considered necessary to find them alternative accommodation.⁹ If this is not done, the family unit, which includes the authors' son, who has a 33 per cent degree of disability, would be left on the streets and the child would have no protection.

⁷ Article 15.4 of the Decree, which regulates the allocation of housing by the Madrid Housing Authority, establishes a maximum period of 10 days for the correction and/or completion of a housing application. If the required documents are not submitted before the deadline, the application is closed.

⁸ The authors provide a report from the social services department of El Álamo local government authority dated 22 May 2019, which confirms this assertion. According to article (7) (1) (f) of Decree No. 19/2006, one of the prerequisites for applications for housing is "(...) [n]ot to be occupying a dwelling or property without sufficient legal right to do so. Occupying a property without a legal right renders any request for housing inadmissible for a period of two years counting from the date of vacation, unless duly accredited proof that the property was vacated voluntarily can be provided".

⁹ Ibid.

Committee's consideration of the State party's request

6. On 18 September 2019, in view of the information received from the State party and the authors, the Committee decided to refuse the request for the interim measures to be lifted as it had not been demonstrated that the risk of irreparable harm to the authors and their son had dissipated. The Committee also decided not to discontinue the communication, since this can be done only if the information provided by the parties gives grounds to believe that a solution to the dispute might be found, which, in the present case, it does not.

State party's observations on admissibility and the merits

7.1 On 18 October 2019, the State party submitted its observations on the communication. The State party expresses its disagreement with the Committee's decision not to discontinue consideration of the communication (see para. 6 above), since this decision means it is required to submit observations on the merits of a dispute that is still ongoing, and thus beyond the scope of the Optional Protocol, in particular article 3 (1), in violation of the rule whereby jurisdiction is reserved for the domestic courts. The State party sees a contradiction in the fact that the authors are required to have exhausted domestic remedies while the State party is required to report on an ongoing procedure, especially when the State party's legal system offers various mechanisms for challenging judicial and administrative decisions in the event of disagreement, which mechanisms may result in the procedure under way taking different paths. However, in order to avoid compromising the right of defence, the State party is hereby submitting its observations on the admissibility and merits of the communication.

7.2 The State party refers to the action taken by the local and regional authorities in relation to the authors. It specifies that responsibility for housing and social welfare, and in particular the management and allocation of emergency social housing, lies with the Autonomous Communities.¹⁰ In the Community of Madrid, where the authors live, the matter is governed by Decree No. 52/2016 establishing the social housing stock and regulating the allocation of housing. Similarly, the social assistance available through social services is regulated by Act No. 11/2003 on Social Services in the Community of Madrid. The State party submits that the authorities complied with this legislation in all actions taken in connection with the authors.

7.3 The State party notes that, when the authors submitted their communication to the Committee on 19 September 2018, more than a year had passed since the judgment of 1 March 2017 had ordered them to vacate the apartment and their eviction had already been stayed once (on 2 March 2018). The State party believes that the authors' real intention is to remain in the apartment they are occupying, since they have not exercised their right to apply for social housing; their last application for this type of housing was submitted on 14 February 2017 and closed on 31 January 2019, pursuant to the above-mentioned legislation, because it was incomplete. The State party reports that no new applications for social housing from the authors have been registered with any of the competent authorities in the field of housing. The State party points out that not only did the authors apply for public housing after occupying their current dwelling, just a few days before the judgment ordering their eviction was handed down, but they also failed to provide the documentation required by the Directorate General of Housing and Rehabilitation. Furthermore, the authors failed to take any action to challenge the decision to close their application, even though they were duly notified.

7.4 The State party therefore considers that the "dispute" before the Committee is not that the authors applied for social housing but were refused, and thus forced to remain in the apartment they are currently occupying. Rather the "dispute" relates to the fact that the authors did not complete their application for social housing properly, and what they are really seeking is to obtain a social rental agreement for the property they are currently occupying, an interest they express in their communication.

7.5 The State party further reports that the authors' eviction has been stayed several times: on 2 March and 21 September 2018; and on 31 May 2019. It emphasizes that, on the first two occasions, the stay was agreed to by the bank that owns the property in order to allow the

¹⁰ It refers to articles 148.1, 148.3 and 148.20 of the Constitution.

authors time to find a solution to their situation. According to the State party, the eviction order of 31 May 2019 was also stayed by Navalcarnero Examining Court No. 3 and, at the time it submitted its observations, the Court was still considering the request for review filed by the bank to challenge the decision to stay the eviction. Thus, the State party affirms that the authors have not been evicted and that no new date has been set for their eviction. The State party considers it necessary for the authors to provide information on their current financial situation so that it can determine whether there is any possibility at the present time of their taking on a rental agreement matched to their income and thus regularizing their situation.

7.6 The State party is also of the view that the communication should be declared inadmissible for failure to exhaust domestic remedies, since the judicial procedure that gave rise to the order to evict the authors is still in progress and the authors are still occupying the property.

7.7 The State party asserts that the fact that the authors moved into the apartment before applying for social housing suggests that available remedies were not exhausted, and that what the authors did was to “opt straightaway for squatting”. In fact, since they failed to file a request for review with the Ministry of Transport, Housing and Infrastructure of Madrid regional government to challenge the decision to close their application for housing,¹¹ which was made on 31 January 2019, the authors have not exhausted available domestic remedies. Moreover, by failing to exhaust administrative remedies, they also eliminated any possibility of exhausting judicial remedies by means of an appeal before the administrative court. Similarly, the authors failed to avail themselves of the precautionary measures that could have been requested through either the administrative¹² or judicial procedure.¹³

7.8 The State party affirms that no one has the right to occupy another’s home and that the right to own property is also a fundamental human right, enshrined in article 17 of the Universal Declaration of Human Rights and article 33 of the Constitution. For these reasons, article 11 of the Covenant cannot be used to legitimize the forced occupancy of another person’s property. This has been recognized by the Committee in its general comment No. 7 (1997), in which the Committee recognizes that evictions are sometimes justified, including when a person is occupying another’s property, but that they must be carried out in a manner warranted by law, with adequate legal remedies available for those affected, in a timely manner and in the presence of competent officials.¹⁴

7.9 In the Community of Madrid, where the authors live, social housing is managed by the Madrid Housing Authority, established pursuant to Decree No. 19/2006. As set out in the preamble to this decree, Madrid regional government’s priority is to offer an immediate solution to individuals and families who, for circumstantial reasons, are experiencing serious difficulties in meeting their housing needs. This includes persons facing imminent eviction from the dwelling that constitutes their habitual, permanent residence who have no other means to obtain accommodation. For this reason, Madrid regional government considered it necessary to create a stock of emergency social housing that could be allocated very quickly to those having suffered a serious deterioration in their socioeconomic situation, including families whose socioeconomic situation has been particularly adversely affected in recent years, in order to support their recovery and social integration.

7.10 Emergency housing is allocated by means of the standard procedure used to allocate housing (which is based on a scale), according to the needs of applicants and with priority being given to those in situations of particular social vulnerability. Situations of special need considered in the allocation of emergency housing include, but are not limited to: imminent eviction from the current dwelling; being a victim of violence based on gender or race, sexual orientation or identity, religion, belief or disability; living in poor housing conditions or in substandard housing; living in a space that is too small or for which the rent is equivalent to

¹¹ The State party refers to article 144, concerning ending administrative proceedings, of Act No. 39/2015 on Common Administrative Procedures of Public Administrations.

¹² Article 117 of the same Act, on staying the enforcement of a contested administrative order.

¹³ Article 129 et seq, on precautionary measures, of Act No. 29/1988, regulating administrative jurisdiction.

¹⁴ Para. 11.

more than 30 per cent of the total family income; or residing in substandard housing with the consent of the owner of the housing.

7.11 The requirements for access to special needs housing are: being an applicant of legal age or an emancipated minor; having a maximum income of 3.5 times the public multiple-effect income indicator (€537.84 per month in 2018); not having been allocated public housing in the previous 10 years; not being the outright owner of another dwelling; living and working in the Community of Madrid; and not occupying a property illegally, without the consent of the owner. Applications will be accepted only from those who, in addition to meeting the access requirements stipulated in the Decree, find themselves in one or more of the situations of special need established therein. Housing is allocated according to actual availability and in accordance with the order obtained and an assessment of the economic, personal and social circumstances of the applicant families.

Authors' comments on the State party's observations

8.1 On 9 December 2019, the authors submitted their comments on the State party's observations. The authors claim that the State party is not being entirely truthful when it states that they have not applied for public housing, since, as stated in the various social services reports provided,¹⁵ they applied for social housing in 2017 but were unable to produce all the documents required by the competent authorities because they were already living in their current home. The authors reiterate that the requirement for applicants to be homeless in order to obtain social housing established in the relevant legislation prevents families in a situation such as theirs from applying for social housing, which they consider to be unfair.

8.2 The authors also claim that they have tried to negotiate and regularize their situation with the bank that owns the apartment, but that the latter has never responded to their approaches. The authors recall that the apartment they are living in had been empty for more than 10 years and was totally dilapidated until they made it habitable.

8.3 The authors add that the bank that owns the property has been "bailed out" by the State party, as have other banks, which have received investments of more than €28 billion from the public coffers. They therefore fail to understand why the State party is so vigorously defending the private property of this "bailed out" bank while leaving its citizens unprotected. In this connection, the authors refer to article 47 of the Constitution, which states that all "Spaniards have the right to enjoy decent and adequate housing" and that it is for the public authorities "to make this right effective, regulating land use in accordance with the common good in order to prevent speculation". The authors also refer to article 128 of the Constitution, which states that the common good takes precedence over individual interests.

B. Committee's consideration of admissibility

9.1 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.

9.2 The Committee recalls that article 3 (1) of the Optional Protocol to the Covenant 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 apply for social housing before beginning the illegal occupancy of the apartment and did not produce the documentation required by Madrid regional government to complete their application for social housing after the illegal occupancy. The Committee is of the view that, for the purposes of article 3 (1) of the Optional Protocol, "domestic remedies" are all remedies available in direct relation with the events that initially gave rise to the claimed violation and that, *prima facie*, may be

¹⁵ The authors refer to the reports of the social services mentioned above and provide a report dated 16 October 2019, which reiterates that they have demonstrated an interest in finding alternative housing since submitting their application for social housing in February 2017, an application which was closed in 2019 because they were unable to produce the required documentation, as it was incompatible with their current housing occupancy status.

reasonably considered as effective for remedying the claimed violations of the Covenant. The Committee notes that the main complaint contained in the authors' communication is that their eviction would be contrary to the Covenant because they have no alternative accommodation. Therefore, the resources that must be exhausted are, first of all, those directly related to the eviction, for example, those aimed at preventing or delaying enforcement of the eviction order as well as those through which they can apprise the judicial bodies of their lack of alternative accommodation. In this connection, the Committee notes that the authors have exhausted all available remedies aimed at preventing or delaying the eviction, since, at the time of submitting their communication, they had appealed against the judgment of 1 March 2017, which ordered them to vacate the property, thereby exhausting this remedy, and had requested a stay of the eviction order on two occasions, citing their precarious economic situation and lack of alternative accommodation.

9.3 With regard to the application for social housing submitted to Madrid regional government, the Committee notes that, as stated by both parties, persons who are occupying housing illegally, as the authors are, cannot apply for social housing from this body. Therefore, the Committee considers that the State party has failed to provide adequate justification that such a remedy would be effective and available in the circumstances of this 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.

9.4 The Committee notes that the rest 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. Consideration of the merits

Facts and legal issues

10.1 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.

10.2 The Committee will proceed to examine which facts can be deemed to have been substantiated and to be relevant to the complaint.

10.3 In December 2016, the authors decided to occupy an abandoned apartment because they were in a precarious economic situation, as Mr. El Azouan Azouz was unemployed and Ms. El Ayoubi devoted herself entirely to the care of their son, who has health problems.

10.4 On 1 March 2017, Navacarnero Examining Court of First Instance No. 3 handed down a judgment ordering Ms. El Ayoubi "and unknown occupants of (address of the authors' home)" to vacate the dwelling in question. When the occupants failed to vacate the property, the bank applied for provisional enforcement of the judgment, requesting the authors' immediate eviction.

10.5 On 14 December 2017, the Court set 2 March 2018 as the first date for the eviction. On 2 March 2018, the competent authorities went to the authors' home in order to carry out the eviction. However, the eviction was not carried out and the authors were given more time to vacate the property.

10.6 Although the authors twice requested a stay of eviction owing to their vulnerable situation, and social services issued two reports requesting a stay, the Court set a new date of 21 September 2018 for the eviction. However, the eviction scheduled for this date was stayed by court order of 20 September 2018, in view of the fact that the representative of the bank that owned the apartment had requested a provisional stay of eviction to take account of the authors' situation.

10.7 On 21 March 2019, Navacarnero Examining Court of First Instance No. 3 set a new eviction date of 31 May 2019 but the eviction scheduled for this date also did not take place. On 31 August 2020, the Court set a new eviction date of 13 January 2021.

10.8 The authors consider that the judicial authorities' decision to evict them from their home, without providing them with adequate alternative accommodation, constitutes a violation of article 11 (1) of the Covenant since no account has been taken of their need and their precarious financial situation. The authors point out that, even though enforcement of the decision has been stayed several times, it remains in force, since Navalcarnero Examining Court of First Instance No. 3 has set a new eviction date of 13 January 2021. The State party argues that the Covenant does not cover evictions in situations of illegal occupancy.

10.9 In the light of the facts that the Committee has deemed to be relevant, and of the arguments submitted by the parties, the key question raised by the communication is whether the decision to evict the authors constitutes a violation of the right to adequate housing enshrined in article 11 (1) of the Covenant. To answer this question, the Committee will first recall its jurisprudence on protection against forced evictions. It will then examine the specific case of the author's eviction and address the issues raised in the communication.

Protection against forced eviction

11.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights¹⁶ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.¹⁷ The right to housing should be guaranteed for all persons irrespective of income or access to economic resources¹⁸ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.¹⁹

11.2 Forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances.²⁰ 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 between the legitimate objective of the eviction and its consequences for the evicted persons.²¹ This obligation arises 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.²²

11.3 Thus, in order for an eviction to be justifiable, it must meet the following requirements: firstly, the limitation must be determined by law; secondly, it must promote the common good in a democratic society; thirdly, it must be suited to the legitimate purpose cited; fourthly, 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; and lastly, the benefits of the limitation in promoting the common good 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 suitable alternative accommodation, the personal circumstances of the occupants and their dependants and whether they have cooperated 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 banks or other entities.²³ The State party will be committing a violation of the right to adequate housing if it stipulates that a person who is occupying a property illegally must be evicted immediately irrespective of the circumstances in which the eviction order would be carried out.²⁴ This analysis of the proportionality of the measure must be carried

¹⁶ General comment No. 4 (1991), para. 1.

¹⁷ *Ibid.*, paras. 7 and 9.

¹⁸ *Ibid.*, para. 7.

¹⁹ *Ibid.*, para. 12.

²⁰ *Ibid.*, para. 18, and general comment No. 7, para. 1.

²¹ *Ben Djazia et al. v. Spain*, para. 13.4.

²² *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

²³ *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 11.5.

²⁴ *Ibid.*, para. 11.

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.²⁵

11.4 In addition, there must be a real opportunity for effective prior consultation, in good faith, between the authorities and the persons concerned, there must be no alternative means or measure less injurious to the right to housing available, and the persons concerned must not be left in or at risk of a situation constituting a violation of other Covenant or human rights.²⁶

Duty of States to provide alternative housing to persons in need

12.1 Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations. Where those affected are unable to provide for 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.²⁷ 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.²⁸ 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.²⁹

12.2 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.³⁰ However, all measures adopted should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right as swiftly and efficiently as possible.³¹ Policies on alternative housing in cases of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.³²

12.3 Alternative accommodation 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; location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of

²⁵ Ibid.

²⁶ Ibid., para. 151.

²⁷ General comment No. 7, para. 16.

²⁸ *Ben Djazia et al. v. Spain*, para. 15.2.

²⁹ Ibid., para. 155. See also the Committee's statement regarding 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).

³⁰ General comment No. 4, para. 8 (c). See also para. 13.

³¹ General comment No. 3 (1990), para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

³² See, for example, the 2015 report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context (A/HRC/31/54, paras. 28–38).

cultural identity and diversity may be respected.³³ It must also take account of the right of members of a family not to be separated.

12.4 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.³⁴

Requirements for access to alternative housing and illegal occupation

13.1 The Committee considers that, with a view to making efficient use of the resources of their social services, States parties may set criteria or conditions that applicants must satisfy in order to receive social benefits such as alternative housing. Similarly, States parties may take measures to protect private property and to prevent the illegal occupation of property in bad faith.³⁵ However, the conditions governing access to social services must be reasonable and carefully designed, not only so as to prevent potential stigmatization but also to ensure that the conduct of a person in need of alternative housing cannot in itself be used by the State to justify denying his or her application.³⁶ In addition, the interpretation and application by courts and administrative authorities of rules for access to social housing or alternative accommodation must avoid perpetuating the systemic discrimination and stigmatization of those who live in poverty and who occupy property legally out of necessity and in good faith.³⁷

13.2 Furthermore, since the lack of affordable, available housing is rooted in growing inequality and housing market speculation, States parties have an obligation to resolve these structural problems through appropriate, timely and coordinated responses, to the maximum of their available resources.³⁸

Analysis of the proportionality of the author's eviction

14.1 The Committee will consider whether the decision to order the authors' eviction from the apartment they are occupying constituted a violation of their right to adequate housing or whether the authorities' intervention constituted a justified limitation on their right to housing in accordance with article 4 of the Covenant. The authors took up residence in the apartment in December 2016. On 1 March 2017, following a complaint by the bank that owned the apartment, Navalcarnero Examining Court of First Instance No. 3 ordered the authors to vacate the property in question, since they were occupying it illegally without a legal agreement. This sentence was upheld by Madrid Provincial Court on 4 October 2017.

14.2 The Committee notes that the authors have remained in the apartment thanks to the stay of three eviction orders. The Committee also notes that, on 31 August 2020, Navalcarnero Examining Court of First Instance No. 3 set a new eviction date of 13 January 2021.

14.3 In their requests for a stay of eviction, the authors gave details of their particularly vulnerable economic situation and their son's health problems, including his 33 per cent disability, and indicated that they did not have alternative accommodation in which to live if they were evicted. In addition, the social services of El Álamo local government authority

³³ General comment No. 4, para. 8.

³⁴ *López Albán v. Spain*, paras. 9.1 to 9.4.

³⁵ *Ibid.*, para. 10.1.

³⁶ *Ibid.* See also *Ben Djazia et al. v. Spain*, para. 17.2, and the 2019 report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/40/61, para. 41).

³⁷ A/HRC/40/61, para. 41.

³⁸ See *Ben Djazia et al. v. Spain*, para. 17.2, and the 2017 report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/34/51, paras. 27 to 29).

issued several reports stating that the family is in a vulnerable situation due to their precarious finances and that the competent authorities have not found a solution to the family's situation, which requires the allocation of alternative housing. The Committee notes that the authors' claims regarding their right to housing were not addressed by the judicial authorities. In this regard, the Committee notes that, although their requests for a stay of eviction were dismissed on 4 June and 7 September 2018, the eviction order was not carried out.

14.4 The Committee notes that the authors were able to appeal the decisions taken at first instance and that they were assisted by counsel. The Committee also notes that the authors have not claimed that due process guarantees were not respected, and none of the information before the Committee suggests that the process was arbitrary.

14.5 The Committee also notes that, for the State party, allowing the authors to remain in the apartment would be tantamount to validating criminally unlawful conduct on the grounds of the right to housing and would constitute a violation of the owner's right to property under national law. The Committee notes that the right to private property is not a Covenant right, but 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. Given that the authors were ordered to vacate the property in a civil judicial procedure, the Committee considers that there were legitimate reasons for their eviction and that it could therefore be justified. Nevertheless, the Committee notes that Navalcarnero Examining Court of First Instance No. 3 did not conduct an analysis of the proportionality of the legitimate objective of the eviction to its consequences for the persons evicted. Specifically, the court did not weigh the benefits of the measure – in this case, protecting the right to property of the bank that owns the apartment – against its possible consequences for the rights of the evicted persons. Analysing the proportionality of an eviction entails examining not only the consequences of the measures for the evicted persons but also the owner's need to recover possession of the property. 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 banks, as in the current case.³⁹ 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.

14.6 In this case, although the authors claimed that the measure would affect their right to adequate housing, Navalcarnero Examining Court No. 3 did not conduct any analysis of proportionality between the harm caused by the authors in occupying the apartment and the harm they were seeking to avoid by such occupation on finding themselves homeless. The Committee notes that the Court found that the reasons given by the authors concerning their state of need due to their precarious financial situation and their son's health did not constitute valid reasons for occupying the property (see para. 2.6 above) and that, in response to one of the requests for a stay of eviction made by the authors, the Court simply indicated that the arguments put forward by the authors could not be invoked in "a procedure of this type" (see para. 2.10 above). Furthermore, the State party's legislation did not provide the authors with any other judicial mechanism through which to challenge the eviction orders that would have given another judicial authority the opportunity to analyse the proportionality of the eviction and the conditions in which it was going to be carried out. The Committee finds, therefore, that the absence of such an assessment constituted a violation by the State party of the author's right to housing under article 11 (1) of the Covenant, read in conjunction with article 2 (1).

14.7 The Committee notes that, subsequent to the events described in the present communication, the State party issued new legislation designed to ensure that the courts inform social services of the eviction of persons in vulnerable situations so that social services may assess the situation of the persons facing eviction. Pursuant to this legislation, if social

³⁹ *López Albán v. Spain*, para. 11.5.

services conclude that the persons are in a vulnerable situation, the eviction may be postponed for up to a month, or up to three months if the evicting party is a legal entity, to give social services time to provide assistance.⁴⁰ The Committee understands that this legislation could prevent violations of the right to housing such as that found in the present decision insofar as it allows the judicial authorities, or other impartial and independent authorities with the power to order the cessation of the violation and to provide an effective remedy, to assess the proportionality of the eviction requests pursuant to the terms mentioned previously.

D. Conclusion and recommendations

15. The Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the State party violated the author's 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 children

16. The State party is under an obligation to provide the authors and their children with an effective remedy, in particular by: (a) if they are not currently in adequate housing, reassessing 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 Autonomous 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) provide the authors and their children with financial compensation for the violations suffered; and (c) reimburse the authors for the legal costs reasonably incurred in submitting this communication, at both the domestic and international levels.

General recommendations

17. 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 property illegally, 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 property illegally, 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 indigence;

(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 concerned⁴¹ 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 or other persons in vulnerable situations;

⁴⁰ See article 441 of Civil Proceedings Act No. 1/2000, of 7 January, amending Royal Decree-Act No. 7/2019, of 1 March, on urgent measures related to housing and renting.

⁴¹ See *Ben Djazia v. Spain*, para. 21 (c).

(d) Develop and implement, in coordination with the autonomous communities and to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991).⁴² This plan should establish the resources, measures, indicators, time frames and evaluation criteria necessary to guarantee these individuals' right to housing in a reasonable and measurable manner.

18. In accordance with article 9 (2) of the Optional Protocol and rule 18 (1) of the provisional 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 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.

⁴² See also the Committee's concluding observations on the sixth periodic report of Spain (E/C.12/ESP/CO/6, para. 36).