

**Economic and Social Council**

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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. 48/2018***

<i>Communication submitted by:</i>	Soraya Moreno Romero
<i>Alleged victims:</i>	The author and her children
<i>State party:</i>	Spain
<i>Date of communication:</i>	16 August 2018 (initial submission)
<i>Date of adoption of Views:</i>	22 February 2021
<i>Subject matter:</i>	Eviction of the author from her home
<i>Procedural issue:</i>	Exhaustion of remedies
<i>Substantive issue:</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 at its sixty-ninth session (15 February–5 March 2021).



1.1 The author of the communication is Soraya Moreno Romero, a Spanish national born on 8 March 1987. The author is acting on her own behalf and on behalf of her three minor children, born in 2008, 2014 and 2018. 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 In the present Views, 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.

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

The facts as submitted by the author¹

Before the communication was registered

2.1 Until May 2015, the author had lived with her minor children in the home of some relatives. Because the space was overcrowded and she had limited financial means,² she decided that month to begin squatting in a property belonging to a financial institution. While she was negotiating with the institution to enter into a social rental agreement, the property was sold to an investment company.

2.2 On 25 March 2016, the author applied for social housing to the Autonomous Community of Madrid, the regional government authority. Her application file was later closed because not all the documents requested had been received. The author filed an administrative appeal against this decision.

2.3 On 21 November 2017, the investment company that owned the property occupied by the author pressed charges against her for the minor offence of occupying the property of another without authorization.

2.4 On 30 January 2018, Madrid Court of Investigation No. 30 found the author guilty of the minor offence of occupying the property of another without authorization and ordered her to pay a fine calculated at a rate of €2 a day over three months and to vacate the property. In its decision, the Court stated that it could not consider the possibility of fully or partially exculpating the author owing to her state of need because she had not shown that she had exhausted all other possible means of accessing housing before resorting to the unlawful conduct of occupying property without the right to do so. In particular, the Court noted that the author had not shown that she had approached social services before she moved into the property.

2.5 On 19 April 2018, Madrid Provincial High Court upheld the lower court's decision in its entirety.

2.6 On 23 April 2018, the Court ordered that the decision be enforced and, if the author had still not vacated the property, that she be evicted. On 11 May 2018, the author requested that the eviction be postponed by one month so that she could find alternative housing. As the party seeking enforcement did not oppose the request, the eviction was postponed on 29 May 2018.

2.7 On 30 May 2018, the author applied to the Community of Madrid for social rental housing under the special scheme for social emergencies.

2.8 On 30 July 2018, the author was notified by the municipal police that, unless she voluntarily vacated the property beforehand, the eviction order would be carried out on 20 August 2018 at 10 a.m.

¹ These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties in their observations and comments on the merits of the communication.

² The author had been receiving €587.78 a month since June 2012 under the minimum subsistence income scheme. On 30 July 2018, the author started receiving a monthly allowance of €24.25 per child. She has no other sources of income.

2.9 On 2 August 2018, the author asked Madrid Court of Investigation No. 30 to stay the eviction, given her situation of vulnerability, so that she could negotiate with the company that owned the property.

After the communication was registered

2.10 On 17 August 2018, the Committee registered the communication and, to prevent any irreparable harm to the author and her three minor children, asked the State party to take interim measures while the case was being considered by the Committee, either through a stay of eviction or through the provision of alternative housing, by engaging in a genuine and constructive dialogue with her.

2.11 On 20 August 2018, the author submitted the Committee's notice of registration and request for interim measures to Madrid Court of Investigation No. 30. That same day, the Court issued a ruling rejecting the request for the eviction to be stayed. The Court noted that the eviction had been ordered in the context of a criminal case and formed part of a sentence upheld by the Provincial High Court on appeal, and that the exercise of judicial power fell exclusively to the courts and tribunals authorized by law. In addition, the Court recalled that the author's eviction from the property had been postponed on successive occasions, that the competing interests involved needed to be weighed against each other and that the right of the party seeking enforcement to recover possession of the property must be taken into consideration.

2.12 On 28 September 2018, Madrid Court of Investigation No. 30 dismissed the author's request for reconsideration of the ruling of 20 August 2018. With respect to the request for interim measures, the Court pointed out that the Committee was not insisting on a stay of eviction but rather requesting that irreparable harm be prevented either through a stay of eviction or through the provision of alternative housing. The Court affirmed that the decision was being carried out in such a way that the author was not prevented from accessing the resources available through the public authorities to mitigate the effects of the eviction, as the eviction had initially been postponed and social services had been informed of the situation so that they could initiate the public protection measures available. The Court also recalled that, on the date set for the eviction, medical personnel had been present at the property to provide the necessary assistance. The Court stated that it was not the role of the judiciary to evaluate housing policy, but rather to ensure that decisions were enforced. The author appealed the dismissal.

2.13 On 18 March 2019, Madrid Provincial High Court dismissed the author's appeal, partially on the grounds that the request for interim measures submitted by the Committee to the State party was addressed to the State as such, and should not therefore be used to justify or excuse unlawful conduct constituting an offence. Nor, furthermore, should private individuals or legal entities have to bear the consequences, regardless of whether the State adopted alternative measures. The Provincial High Court was also of the view that, when the interests at play were weighed up, the fact that stood out was that the author had been occupying the dwelling illegally for years before the proceedings were initiated, without having approached social services, the body responsible for addressing her needs, and that the proceedings had been prolonged for a year without the author having taken any steps to remedy her situation.

2.14 On 4 April 2019, Madrid Court of Investigation No. 30 ordered that the author and her children be evicted from the property. On 6 April 2019, the author filed a request for reconsideration. On 6 May 2019, the criminal investigation police turned up at the author's home and proceeded to carry out the eviction. The author states that she was not present at the time but that her children, who were being looked after by a relative, were, and that when the relative refused to open the door, the authorities broke it down. The author states that the eviction went ahead and she was not allowed to recover her belongings, which she has lost for good. She also states that social services and health-care personnel were not present at the eviction, as is required by law. The author filed for review of the eviction the same day that it was carried out.

2.15 When the author informed social services of her eviction, they offered her accommodation in a shelter or guesthouse for two weeks as an emergency measure. However,

finding that these options did not meet her needs, the author instead spent a few days in a room offered by a friend and then moved into a room offered by a relative.

2.16 On 28 May 2019, Madrid Court of Investigation No. 30 rejected the author's request for reconsideration, stating that "the obligation to enforce the decision and put an end to conduct constituting a criminal offence has been met, and the public authorities have taken action to minimize the effects". The Court specifically pointed out that the author had been informed that shared accommodation was available but had declined the offer.

The complaint

3. In her initial communication, the author claimed that her eviction, which at that time had been ordered but stayed by Madrid Court of Investigation No. 30, would constitute a violation of article 11 (1) of the Covenant as she had no adequate alternative accommodation. The author stated that neither her need nor her precarious financial situation had been taken into account in the criminal proceedings against her, which had resulted in her conviction for the offence of unlawful appropriation. The author also stated that the eviction could seriously impair her children's progress in school and that, because she had recently had a child, she could not seek work.

State party's observations under article 8 (4) of the Optional Protocol

4. On 5 September 2018 and 7 February 2019, the State party reported that, in the light of the Committee's request for interim measures, the social services department of Madrid city council had offered the author two alternative housing options. It reiterated this information in its written submission to the Committee and added a third option. The first option involved shared accommodation in the district where the author was living, where the family would have exclusive use of a room or rooms to ensure its privacy but would share common areas of the property. This first option was limited to a period of six months and was intended to facilitate the transition to renting a home managed by the Madrid city council on the private market on a shared basis with another family unit. The second option involved accommodation in rooms at a shelter that could be shared by more than one family, was limited to a period of three months and was geared towards the same outcome as the first option. Under the third option added by the State party, the city council would look for an apartment that the author can afford based on the amount she receives under the minimum subsistence income scheme but which might not be in the area where the author is currently living. The State party points out that social services consider the first option to be the most suitable but will provide assistance to the author in all three cases.

Author's comments on the State party's observations under article 8 (4) of the Optional Protocol

5.1 The author submitted comments on the State party's observations on 27 January and 22 August 2019.

5.2 The author points out that the offer that she received came from Madrid city council and that she has received no offer from the Social Housing Agency of the Autonomous Community of Madrid, which has exclusive competence in housing matters and owns properties for use as emergency and social rental housing.

5.3 With respect to the first proposal from social services that the State party refers to, the author maintains that she has received no specific offer of accommodation in a shared apartment that includes an address and the name of the family with whom she would be living. With respect to the proposal to stay in a shelter, the author states that other families have already been turned out of such shelters because of a lack of capacity, as the shelters are used to house the homeless in cold weather. She also notes that accommodation in either a shared apartment or a shelter is a purely temporary solution, intended to provide people with a roof over their heads before channelling them elsewhere. Regarding the third option mentioned by the State party, namely a rental housing search by Madrid city council, the author states that she has never received such an offer and expresses her bewilderment that the city council did not focus on negotiating a social rental agreement with the company that owns the property in which she was living at the time so that she could remain there.

5.4 The author reports that she filed a request for special needs housing with the Madrid Social Housing Agency on 26 October 2018 and that it was updated on 3 December of the same year. She has also filed a new application for housing with Madrid city council and appealed the decision to close the file on the housing application that she had submitted to the Community of Madrid on 25 March 2016.

5.5 The author notes that the eviction was carried out before she was notified that the Provincial High Court had dismissed her appeal against the decision of 28 September 2018. The author states that one of her children is experiencing psychological problems as a result of the eviction and the use of force by the law enforcement officers. She points out that her situation is critical, as she lacks stable housing and has lost all her belongings, and states that the public authorities have provided no answer to her situation. She also points out that the Court has not followed the Committee's instructions, taking them to be mere recommendations.

State party's observations on admissibility and the merits

6.1 On 15 October 2019, the State party asked the Committee to discontinue its consideration of the communication or, alternatively, to find that it is inadmissible or does not disclose any violation of the Covenant.

6.2 The State party points out that, in the case at hand, the author was occupying the premises without authorization before she applied for public housing, which she did on 22 March 2018, to the city council, and on 1 August 2018,³ to the Autonomous Community. In addition, despite her conviction on 30 January 2018, the author remained in the property until 6 May 2019.

6.3 The State party has provided a social services report dated 30 August 2018 which states that the author had had a file with social services since 2010 and that there had been regular follow-ups since 15 June 2017. The social services department of Madrid city council stated that they had reiterated the three alternative accommodation options⁴ referred to above on multiple occasions, but that the family had declined the offers, indicating that it had an alternative available through its social network. Social services stated that the author neither accepted nor supported the socio-residential pathway proposed, which involved putting an end to the unlawful occupation and temporarily sharing accommodation with another family with similar characteristics while continuing to explore alternative housing options for the medium term. In another report, dated 14 October 2019, social services indicated that, since the eviction, the family had been taken in by various members of its social network and was registered with the social services centre so that it would not lose access to the social benefits that it had been granted. Social services reported that they had again put forward the offer of temporary shared housing, and that it had again been declined by the author. With respect to her application for social housing from the Madrid city council, she is on the waiting list.

6.4 With respect to the social housing application filed with the Autonomous Community of Madrid on 1 August 2018, the State party reports that the author was asked to provide additional information on three occasions, as the file was incomplete. With respect to the application of 22 March 2016, the author was informed of the decision to close her application file on 30 April 2019, a decision that she has appealed.

6.5 In the light of the foregoing, the State party is of the view that the author has not exhausted all domestic remedies, as, in the first place, she did not apply for housing before beginning her illegal occupation of the property and, in the second, after moving in, she did not submit the documentation requested by the Autonomous Community of Madrid. An application for housing constitutes an available remedy in respect of the right to housing in the State party system and this avenue should therefore have been exhausted by the author. The State party is thus of the view that the communication is inadmissible for failure to exhaust domestic remedies.

³ According to a report by the Madrid social services, the author had applied for housing on 22 March 2016, but her application file was closed because she had not provided the requested documentation, namely a judgment certifying that she had custody of her children.

⁴ See para. 4.1 above.

6.6 The State party is of the view that article 11 of the Covenant does not protect individuals who are illegally occupying the property of another. The right to own property, individually or with others, is set forth in article 17 of the Universal Declaration of Human Rights and article 33 of the State party's Constitution. Protecting property, considered internationally to be a fundamental human right, ensures that property owners are able to satisfy their basic needs; they must therefore be protected from arbitrary deprivation of their property. Accordingly, article 11 (1) of the Covenant cannot be used to sanction instances where the property of others is unlawfully appropriated, as in the present case. Moreover, in its general comment No. 7 (1997), the Committee recognizes that evictions are sometimes justifiable, such as in cases of squatting, 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.

6.7 The State party argues that the right to housing is not an absolute right to a particular dwelling owned by another person, nor is it an absolute right to be provided with housing by the authorities, if public resources are insufficient for the provision of such housing. The State party considers that article 25 (1) of the Universal Declaration of Human Rights and article 11 (1) of the Covenant do not recognize an enforceable, subjective right, but rather establish a mandate for States to take appropriate measures to promote public policies aimed at improving access to decent housing for everyone. According to the case law of the Court of Justice of the European Union,⁵ the right enshrined in article 34 (3) of the Charter of Fundamental Rights of the European Union is not the right to housing but rather the right to housing assistance within the framework of social policies based on article 153 of the Treaty on the Functioning of the European Union. This State mandate has been expressly recognized in article 47 of the Constitution and various statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,⁶ 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 land use for the common good in order to prevent speculation. As the right is one that is realized progressively, the State party is in full compliance with its international obligations in the area and refers to the statements it has made in connection with communications similar to the present one on its efforts in the area of housing.

6.8 The Autonomous Community of Madrid, the regional government authority involved in the present case, has a Social Housing Agency that manages its social housing stock. Housing is allocated by means of the procedure set out in Decree No. 52/2016. To be eligible for special needs housing, an applicant must be an adult or an emancipated minor, have income that is no more than 3.5 times the Government's multipurpose indicator for income (which was €537.84 a month in 2018), not have been awarded public housing within the 10 preceding years, not be the outright owner of another property, live or work in the Community of Madrid, and not be occupying a property without the right to do so or the consent of the owner. Individuals considered to be in a situation of special need making them eligible for priority housing include those who have been evicted, those who are victims of violence, those living in homes of poor, substandard or inadequate quality, and those living in homes where the rent is more than 30 per cent of the family income. Applications are reviewed and scored using a common scale and housing is allocated according to availability, in the order of the scores obtained, which reflect the financial, personal and social circumstances of the family units concerned.

6.9 In the present case, the authors unlawfully gained access to a property and claim that article 11 (1) provides protection for this unlawful occupation. The right to housing clearly cannot be used as a cover for unlawful acts. The State party points out that the authorities have acted in accordance with the resources they have available, the laws governing the allocation of public housing and the principles of equality, transparency and competition,

⁵ *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria SA*, order of the Court of Justice of the European Union C-539/14 of 16 July 2015, para. 49.

⁶ Constitutional Court judgments No. 152/1988, No. 7/2010 and No. 33/2019.

given that housing is a limited resource. The author has been offered housing solutions that she has repeatedly declined and has not completed her housing application. The State party concludes that the communication does not disclose any violation of the Covenant and requests that the Committee discontinue its consideration of it.

Author's comments on admissibility and the merits

7.1 On 6 January 2020, the author reiterated that she has been in a completely precarious situation since her eviction. She also states that the authorities have made no specific offers of accommodation or housing beyond six months' temporary accommodation in a shelter, where there are many conflicts among residents and which would not be suitable for a family with minor children.

7.2 The author also states that, prior to the trial in which she was convicted of a minor offence, the financial institution that had previously owned the property had brought a complaint against her in 2016. The complaint was provisionally dismissed on 4 August 2016 because there was insufficient evidence to prosecute. On 3 September 2018, the proceedings were definitively dismissed because criminal liability had been extinguished. The author argues that the consideration of the complaint filed against her by the new owner on 21 November 2017 constitutes a violation of the principle of *non bis in idem*.

7.3 The author states that she has not been granted the housing that she has applied for by either the city council or the Community of Madrid, despite being a single mother with a recognized 35 per cent disability, and that this is because she has been discriminated against because of her Roma ethnicity.

7.4 The author reports that she has lost the financial benefits that she had received for being registered with a government office and that this constitutes a violation of article 11 (1) of the Covenant because she is a woman with a disability and of Roma ethnicity.

B. Committee's consideration of admissibility

8.1 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.

8.2 The Committee recalls that article 3 (1) of the Optional Protocol precludes it from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. The State party argues that the author has not exhausted all domestic remedies because she did not apply for social housing before beginning her illegal occupation of the property and, after moving in, did not submit the documentation requested by the Autonomous Community of Madrid to complete her application. The Committee is of the view that, for the purposes of article 3 (1) of the Optional Protocol, "available domestic remedies" are all remedies available to the author in direct relation with the events that initially gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant. The Committee notes that the principal complaint put forward by the author in her communication is that her eviction would contravene the Covenant because she has no alternative housing. Therefore, the remedies that must be exhausted are, first of all, those directly related to the eviction, such as remedies aimed at preventing or delaying the eviction or serving to notify the courts of the lack of alternative housing. In this connection, the Committee notes that the author exhausted all the available remedies aimed at preventing or delaying the eviction, since, at the time she submitted her communication, she had appealed against the judgment of conviction that ordered her to vacate the property, thereby exhausting this avenue, and had requested that the eviction order be stayed and that social services be duly informed, given her lack of alternative housing. With respect to the application for social housing filed with the Autonomous Community of Madrid, the Committee notes that, according to the State party, persons such as the author who are occupying a property without a legal right to do so cannot apply to this body for social housing. The Committee therefore finds that the State party has failed to sufficiently demonstrate that this remedy was available and would have been effective in the circumstances of the present case. Consequently, the Committee finds that

the author has exhausted all domestic remedies related to this claim and declares it admissible under article 3 (1) of the Optional Protocol.

8.3 The Committee notes that the author claims in her last submission that her conviction for the offence of unlawful appropriation violated the principle of *non bis in idem*, since earlier criminal proceedings arising from the same facts had been dismissed. However, the Committee also notes that she did not make this claim in her first submission, even though the events referred to predated it. The Committee further notes that the author made no such claim in her appeal of 18 February 2018 to the Provincial High Court. The Committee therefore finds this claim inadmissible for failure to exhaust available domestic remedies under article 3 (1) of the Optional Protocol.

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

C. Committee's consideration of the merits

Facts and legal issues

9.1 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.

9.2 The Committee will proceed to examine the facts that it considers to have been established and to be relevant to the complaint.

9.3 The author began squatting in the property in May 2015. In November 2017, criminal proceedings were initiated against her for the offence of unlawful appropriation. On 30 January 2018, the author was found guilty of the minor offence of occupying the property of another without authorization and was ordered to pay a three-month fine calculated at a rate of €2 a day and to vacate the property. The Provincial High Court upheld this decision on 19 April 2018.

9.4 Between March and May 2018, the author applied for housing from the city council and the Autonomous Community of Madrid. The latter application was later supplemented on several occasions.

9.5 On several occasions between March 2018 and May 2019, Madrid social services offered the author three temporary housing options: accommodation shared with another family, accommodation in a shelter, and assistance in finding housing within her means in another district. The author declined these offers on the grounds that the authority offering these housing solutions was not the one empowered to do so and that the solution was inadequate because it was only temporary and involved sharing accommodation.

9.6 With the agreement of the owner, the author's eviction was postponed for one month beginning 29 May 2018. The date of 20 August 2018 was set for a forced eviction that did not take place. On 6 May 2019, the author was evicted.

9.7 After the eviction, as an emergency measure, Madrid social services offered the author two weeks' accommodation in a shelter or guesthouse, but the author declined the offer, staying instead with persons forming part of her social network.

9.8 The author is of the view that her eviction, without adequate alternative housing being provided, violates article 11 (1) of the Covenant, as her need and precarious financial situation had not been taken into account. The State party argues that the Covenant does not apply to evictions of persons occupying property without legal right. Furthermore, the State party is of the view that the Covenant does not recognize an enforceable, subjective right, but rather a right that is to be realized progressively, and that it is in full compliance with its international obligations in the area, as it has taken all possible steps, given the resources available, to provide the author with alternative housing.

9.9 In the light of the facts that the Committee has deemed to be relevant, and of the arguments submitted by the parties, the question raised by the communication is whether the

eviction of the author constituted a violation of the right to adequate housing under article 11 (1) of the Covenant. To answer this question, the Committee will begin by recalling its jurisprudence on protection against forced eviction. It will then examine the specific case of the author's eviction and address the issues raised in the communication.

Protection against forced eviction

10.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights⁷ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.⁸ The right to housing should be guaranteed for all persons irrespective of income or access to economic resources⁹ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.¹⁰

10.2 Forced evictions are prima facie incompatible with the Covenant and can be justified only in the most exceptional circumstances.¹¹ Where there is a risk that an eviction might affect the evicted person's right to housing, the relevant authorities must ensure that it is carried out in accordance with legislation that is compatible with the Covenant and in compliance with the principle of proportionality between the legitimate objective of the eviction and its consequences for the evicted person.¹²

10.3 For an eviction to be compatible with the Covenant, it must be provided for by law and carried out as a last resort, and the persons concerned must have had prior access to an effective judicial remedy in order for it to be determined that the measure in question is duly justified, for example, in cases where there is no legal title for the tenancy. In addition, there must be a real opportunity for genuine and constructive prior dialogue 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 exposed to a situation constituting a violation of other Covenant or human rights.¹³

Duty of States to provide alternative housing to persons in need

11.1 Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for 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.¹⁴ 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.¹⁵ 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.¹⁶

⁷ General comment No. 4 (1991), para. 1.

⁸ *Ibid.*, paras. 7 and 9.

⁹ *Ibid.*, para. 7.

¹⁰ *Ibid.*, para. 12.

¹¹ *Ibid.*, para. 18; and general comment No. 7 (1997), para. 1.

¹² *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 13.4; and *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 8.2.

¹³ *Ben Djazia and Bellili v. Spain*, para. 15.1; and *López Albán v. Spain*, para. 8.3.

¹⁴ General comment No. 7, para. 16.

¹⁵ *Ben Djazia and Bellili v. Spain*, para. 15.2.

¹⁶ *Ibid.*, para. 15.5. 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).

11.2 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.¹⁷ However, all measures adopted should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right¹⁸ as swiftly and efficiently as possible. 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.¹⁹

11.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected.²⁰ It must also take account of the right of members of a family not to be separated.²¹

11.4 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 home to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative home 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.²²

Analysis of the proportionality of the author's eviction

12.1 The Committee will consider whether the author's eviction from the property she was occupying constituted a violation of her right to adequate housing.

12.2 The Committee notes that the author was able to appeal the decisions taken at first instance and that she was assisted by counsel.

12.3 The Committee also notes that, for the State party, allowing the author to remain in the property 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 the protection of all rights established in its legal system, so long as this does not conflict with the rights set forth in the Covenant.²³ Given that the author was convicted of a minor offence of unlawful appropriation, the Committee considers that there were legitimate reasons for her eviction and that it could therefore be justified. The Committee notes that Madrid Court of Investigation No. 30 examined all the author's claims relating to her right to housing and examined the proportionality of the eviction. The Court agreed to a postponement of the eviction on 29 May 2018. In its decisions of 20 August 2018, 28 September 2018 and 28 May 2019, the Court refused to postpone the eviction again, noting, *inter alia*, that the author

¹⁷ General comment No. 4, para. 8 (c). See also para. 13.

¹⁸ 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.

¹⁹ See, for example, the 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).

²⁰ General comment No. 4, para. 8.

²¹ *López Albán v. Spain*, para. 9.3.

²² *Ibid.*, para. 9.4.

²³ *Ibid.*, para. 11.5.

had been granted extensions to give her time to vacate the property, that social services had been made aware of the situation, that the author had received an offer of shared accommodation, which she had declined, and that the interests of the party seeking enforcement had to be taken into account and a balance achieved between addressing the author's situation, on the one hand, and enforcing the decision and putting an end to the criminally unlawful conduct, on the other.

12.4 The Committee considers that, in general, States parties enjoy a degree of discretion when regulating matters such as the unlawful occupation of property and when deciding on judicial remedies aimed at protecting the peaceful enjoyment of property in a democratic society. Nevertheless, such discretion is not unlimited and must be compatible with the obligations of States parties under the Covenant and other applicable human rights treaties. In particular, the Committee believes that, if a person is evicted by means of criminal proceedings, 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.²⁴ 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 limitations on the enjoyment of the rights under the Covenant are permitted.²⁵ Thus, evictions as a consequence of criminal proceedings must not be the norm. Moreover, they must be regulated by law, promote the common good in a democratic society, be appropriate to the legitimate aim being sought and be strictly necessary. The State party must, in each individual case, justify the use of criminal proceedings to evict a person and consider whether other less onerous means exist to achieve the legitimate aim of the limitation.

12.5 In the present case, the Committee notes that the author has not presented, either before the national authorities or before the Committee, allegations related to the fact that her case was examined in the context of criminal proceedings. The Committee recalls its jurisprudence, according to which, when the documentation submitted discloses facts established in adversarial proceedings, regarding which the parties have had the opportunity to present their respective observations and comments, that clearly reveal a possible violation of a provision of the Covenant that has not been cited, the Committee is empowered to examine the possible violation of articles not invoked by the parties, provided that it does not look beyond the claims made in the communication.²⁶ Given the specific circumstances of the present case and in view of the elements presented by the parties, the Committee believes that an examination of this point is not relevant to the present case.

12.6 The Committee notes the State party's view that, as eviction was unavoidable, social services' offers of temporary emergency housing for the author constituted a response to the situation, to the maximum of the State party's available resources, and demonstrate that the State party has fulfilled its obligations under the Covenant to take all steps, to the extent of the resources available, to provide the author with alternative housing. The Committee notes that the author declined the offers of shared temporary housing, which, according to the social services, is part of a socio-residential pathway designed to support families in achieving autonomy and accessing housing within their financial grasp on the private market. The Committee notes that the author declined this offer mainly because it involved temporary housing. With respect to the offer of assistance in finding housing within the author's financial means, the author merely states that the focus should have been on negotiating with the company that owns the property she was occupying, and there is no indication that the author contacted social services again to obtain more information on any of the three options. The Committee notes that the author has provided no evidence that would indicate that the offers of temporary accommodation would be incompatible with human dignity, unsafe or otherwise unacceptable. Therefore, in the absence of any other elements indicating that the State party has failed to take all steps, to the maximum of its available resources, to protect

²⁴ *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 8.2.

²⁵ *Ibid.*, para. 9.4.

²⁶ *Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para. 9.10.

the rights of the author, the Committee finds that the elements before it do not disclose a violation of article 11 (1) of the Covenant.

D. Conclusion

13. On the basis of the foregoing considerations of fact and law, the Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the eviction of the author does not constitute a violation of her right to adequate housing under article 11 (1) of the Covenant.

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