



Economic and Social Council

Distr.: General
23 November 2021
English
Original: French

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. 61/2018*

<i>Communication submitted by:</i>	Lorne Joseph Walters (represented by counsel, Christine Rygaert)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belgium
<i>Date of communication:</i>	5 October 2018 (initial submission)
<i>Date of adoption of Views:</i>	... 2021
<i>Subject matter:</i>	Eviction of the tenant following judicial proceedings initiated by the owner
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right of submission
<i>Substantive issues:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	3 (1) and 2 (f)

1.1 The author of the communication is Lorne Joseph Walters, a Belgian citizen, born on 7 October 1945. He claims to be a victim of a violation by the State party of his rights under article 11 of the International Covenant on Economic Cultural and Social Rights. The Optional Protocol entered into force for the State party on 20 August 2014. The author is represented by counsel.

1.2 In the present Views, the Committee first summarizes the information and the arguments submitted by the parties and the intervening third party (paras. 2.1–6.6 below), without reflecting the Committee's position. It then considers the admissibility and merits of the communication and, lastly, draws its conclusions and issues recommendations.

* Adopted by the Committee at its seventieth session (27 September–15 October 2021).



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

The facts as submitted by the author¹

Before the registration of the communication

2.1 The author has been living in rented accommodation in Brussels since 9 March 1994. He claims that, despite his low income, namely the €1,185 per month he receives under his guaranteed income for older persons, he has always paid his rent when due. While his only family resides in Canada, the author points out that he has also come to lead an active social life with his neighbours and the local shopkeepers.

2.2 On 21 August 2017, the owner of the apartment informed the author that she was terminating the lease, which would expire on 28 February 2018, giving him six months' notice and in return for the payment of compensation equivalent to six months' rent. The owner thus terminated the lease pursuant to article 3 (4) of the Act of 20 February 1991 amending the provisions of the Civil Code relating to leases.

2.3 The author alleges that the owner's decision to terminate the lease was made against the backdrop of a dispute between the author and the owner of the neighbouring building, the nephew of the owner of the apartment rented by the author. He points out that he obtained, in court, the withdrawal of the planning permission for regularization given to the owner of the neighbouring building because of a defect in the quality of the sound insulation of the adjoining walls. According to the author, the owner's objective was to allow her nephew to rent out the neighbouring apartment without carrying out an acoustic study.

2.4 On 3 October 2017, the owner filed an application for ratification of the rental notice before the justice of the peace court of Etterbeek. By a decision of 28 November 2017, the court ratified the rental notice and ordered the author to leave the apartment no later than 28 February 2018, the date of the end of the lease; failing that, the owner could have him evicted on her own initiative and his furniture and belongings disposed of by a court bailiff tasked with doing so, as of 1 March 2018. The author was also ordered to pay legal interest and costs.

2.5 On 6 February 2018, the author appealed against the decision of the justice of the peace court of Etterbeek.

2.6 On 14 March and 29 May 2018, the first division of the French-speaking court of first instance of Brussels rejected the author's allegation that the owner's action constituted an abuse of her right to terminate the lease early on illegitimate grounds involving the dispute before the courts between her nephew and the author. The court considered that the owner had a legitimate interest in "putting her affairs in order" and it had not been shown that she had acted with malicious intent. The exercise of the right becomes improper only when it clearly goes beyond the limits of discretion in the normal exercise of this right, especially since the lessor does not have to justify her decision. Accordingly, the court upheld the decision of 28 November 2017 with regard to the ratification of the rental notice and the lease termination date. However, it granted the author a grace period running until 30 September 2018 to leave the premises in the light of his age and personal circumstances. The court considered that it was necessary to balance the interests of both parties and that account should be taken of the extensions that the author had already enjoyed *de facto*. It thus concluded that the grace period could not be extended until 28 February 2021, as requested by the author, as this would have deprived the owner of the benefits she intended to derive from her decision to terminate the lease early, while requiring her to pay compensation amounting to six months' rent. The court also adjusted the costs of the proceedings before the first court, ordering the author to pay a total amount of €265 by way of compensation for the two court proceedings.

¹ The facts are presented as reconstructed from the author's communication and the submissions of the parties.

2.7 On 4 July 2018, the author registered with the Etterbeek Social Housing Agency and the Property Management Authority as an applicant for rented housing. On 17 September 2018, a bailiff informed the author that his eviction was scheduled for 8 October 2018.

2.8 On 26 September 2018, the author filed an application for legal aid with the Legal Aid Office at the Court of Cassation to lodge an appeal with this court. The author claimed that, because of his low income, he had not been able to find decent housing and that no social housing was available to him. Furthermore, he stated that, according to a certificate dated 17 September 2018 issued by his psychiatrist, his psychological state prevented him from leaving his home under duress for fear that his condition would take a dramatic and irreversible turn for the worse.

After the registration of the communication

2.9 On 5 October 2018, the Committee registered the author's communication and, pursuant to article 5 of the Optional Protocol and in order to avoid possible irreparable harm to the author, requested the State party to suspend the author's eviction from his home while the communication was being examined by the Committee or provide him with alternative housing to meet his specific needs, in genuine and effective consultation with him.

2.10 On 6 October 2018, the burgomaster of the commune of Etterbeek requested that the author be placed under involuntary psychiatric observation owing to his threats of suicide. He was taken by force by the police to a hospital and then released following a medical examination, which concluded that there was no risk of suicide, mental illness or dangerousness. As a result of this event, the bailiff agreed to postpone the eviction until 17 October 2018.

2.11 The author emphasizes that he contacted the State party's authorities on several occasions to inform them of the lack of alternative housing despite the interim measures requested by the Committee.² On 15 October 2018, the author filed an ex parte application with the President of the French-speaking court of first instance of Brussels for a summary judgment to ensure the implementation of the interim measures requested by the Committee. On the same day, the President of the court rejected his request, considering that it did not fall to the Committee to interfere with judicial decisions handed down by the domestic courts. The communal administration of Etterbeek, after consulting an expert and a lawyer, decided against intervening in the eviction proceedings under way.

2.12 On 17 October 2018, the author was evicted from his home. According to the eviction notice, a social worker from the commune of Etterbeek was present and offered the author assistance, which he refused. Many of the author's friends were at the scene to help him pack up his belongings. The author then took part of his belongings with him, and the rest was taken to the communal storage depot in Etterbeek.

2.13 On 24 and 31 October 2018, the Office of the Minister of Housing of the Brussels-Capital Region contacted the author to offer him help with finding accommodation. The Office proposed that the author register with the Public Social Welfare Centre but confirmed that only two options would be offered to him: transitional supported accommodation or residential home. The Office told the author that he would be sent a list of housing units on the private market that might be of interest to him and that, as part of the search for rented accommodation, assistance with the security deposit could be requested. On 2 November 2018, the author replied to the Minister's Office explaining that there was no point in registering with the Public Social Welfare Centre, as his profile did not allow him to move up the long waiting list, and that an apartment of around 80 m² was required to meet his needs, so that he could have enough space to keep his belongings and put up his granddaughters when they visited him from Canada, and, if possible, a small terrace to look after his plants.

2.14 On 27 November 2018, the Social Welfare Services wrote a report explaining that, prior to his eviction, the author had refused any proposal because his objective was to remain

² According to the documents attached to his communication, the author contacted several times and met with the burgomaster of Etterbeek, as mentioned in his emails of 31 July and 1 October 2018.

in his apartment at all costs and that, after the eviction, he had declined emergency alternative housing because he was to be put up by an acquaintance.

2.15 On 28 March 2019, the author informed the Office of the Minister of Housing of the Brussels-Capital Region that he had still not found housing and that he had never been invited to visit any apartment that had been offered to him. On 29 March 2019, the Minister's Office indicated that the author had been put in touch with various communal and regional services, that the author had declined the assistance because he preferred to do his own search and that it was not possible to grant him social housing, as other people in more precarious situations were ahead of him on the list.

2.16 On 16 July 2019, the author applied to the Public Social Welfare Centre for a special dispensation to obtain housing, claiming that he was unable to find an apartment on the private market that met his needs. On the same day, the Social Housing Company informed the author that it was not in a position to offer him housing.

2.17 On 8 October 2020, the author's appeal for a judicial review was dismissed. In its judgment, the Court of Cassation found that the appeal court had ruled out the abuse of rights after giving well-balanced consideration to the parties' interests by taking into account all the circumstances of the case existing at the time of the alleged abuse of rights.

The complaint

3.1 The author claims that the State party violated his right to adequate housing under article 11 of the Covenant.

3.2 The author argues that the right to housing now has a horizontal dimension and can therefore be invoked by the tenant against the lessor even if the lease agreement has been terminated in accordance with national law. The author argues that a tenant must be able to assert his right to housing with regard to the lessor, whether private or public, that the national authorities must ensure that the eviction of a tenant does not violate the provisions of article 11 (1) of the Covenant, that a forced eviction from a dwelling is in principle contrary to the Covenant except in certain circumstances, namely that such eviction is provided for by law, is justified and is a measure of last resort.³

3.3 The author argues that older persons are more affected by forced evictions and should therefore be helped to continue living in their homes as long as possible.⁴ He further argues that the eviction of older persons from their homes is a sudden wrench that takes them out of their living environment and makes them more vulnerable.⁵ He also stresses the fragility of his state of health and the risks of aggravation in the event of forced eviction, as attested by a medical certificate from his psychiatrist dated 17 September 2018.

3.4 The author alleges that the State party violated article 11 (1) of the Covenant by allowing the lessor to break a lease agreement without cause and by allowing a tenant to be evicted from his dwelling without having first found alternative accommodation.

State party's observations on admissibility and the merits

4.1 In its observations dated 5 June 2019, the State party maintains that the communication does not meet the admissibility requirements of the Optional Protocol and that, in any case, it does not disclose any violation of Covenant rights.

4.2 According to the State party, the communication does not meet the admissibility criteria set out in article 3 (1) of the Optional Protocol, as the author did not take his case to the Court of Cassation before applying to the Committee and therefore had not exhausted domestic remedies.

³ See *Ben Djaia and Bellili v. Spain* (E/C.12/61/D/5/2015); and Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991).

⁴ See Committee on Economic, Social and Cultural Rights, general comments No. 6 (1995) and No. 7 (1997).

⁵ The author attaches in this respect a study carried out by the economist Marion Englert.

4.3 Furthermore, the communication does not meet the admissibility criterion set out in article 3 (2) (f) of the Optional Protocol given that the author abused the right to submit a communication, as he could not expect as a tenant to remain in his dwelling for life. The State party indicates that the author violated the terms of the lease agreement by occupying his dwelling without title and that he placed himself in a situation of distress by refusing to consider any alternative to remaining on the premises, despite the eight months he was given to relocate in application of the grace period granted. The State party also indicates that the author systematically refused any offer of temporary housing and rehousing assistance, both before and after his eviction.

4.4 Should the communication be found admissible, the State party argues that it does not disclose any violation of the author's rights, since he placed himself in the circumstances that he criticizes even though the termination of his lease was in keeping with legislation that was foreseeable and proportionate to the circumstances and accompanied with safeguards applied by the domestic courts.

4.5 First of all, the State party argues that, since the right to adequate housing includes a right to housing and security of tenure, evictions are prima facie contrary to the provisions of the Covenant unless justified.⁶ The State party indicates that, in this particular case, the author was consulted and informed about the planned eviction when he was summoned before the justice of the peace court and the French-speaking court of first instance of Brussels. Furthermore, the author was given notice six months before the end of the lease and, owing to the grace period granted, the author was evicted more than one year after the notice given by the owner. The State party also points out that the eviction was carried out by a bailiff, in accordance with the law, and that a case worker from the Etterbeek Public Social Welfare Centre was present on the day of the eviction to propose emergency alternative housing, which was refused by the author. The legislation also prohibits the eviction of a tenant in bad weather. The State party further points out that the author did not make use of the opportunity to express his opposition to the eviction when the judgment was communicated to the Public Social Welfare Centre. Lastly, the State party stresses that the author received free legal assistance. Consequently, it considers that it has complied with all the protection measures recommended by the Committee in the event of eviction.

4.6 The State party describes the legal rules governing residential leases at the time of the events, the progressive and protective spirit of the ordinance of 27 July 2017 on the regionalization of residential leases and the consideration in national legislation on residential leases of the specific vulnerability of older persons with regard to the right to adequate housing.

4.7 The State party then notes that the right to adequate housing entails a duty to protect the tenant, including from private lessors.⁷ It emphasizes that domestic housing legislation protects the consent of tenants, including through the requirement of a written lease and an inventory of the property. The early termination of the lease without cause is only possible at the end of the first or second three-year period; substantial compensation must in this case be paid to the tenant in addition to the period of notice granted, and he or she has the possibility of requesting an extension for exceptional circumstances, including the tenant's age. In particular, article 251 of the Brussels Housing Code provides that, "in the absence of an agreement between the parties, the court may grant the extension, taking into account the interests of both parties, including the possible old age of one of the parties". Furthermore, it is possible under this code to conclude a lease for life for the lessee. In this case, and unless provided otherwise, the termination options available to the lessor do not apply to this lease agreement. It follows that, although the applicable law allows for the termination of a lease agreement without cause, it is important to add that this is accompanied by strict conditions and guarantees for the lessee. The State party considered the proposal to take away the option of termination without cause from the lessor but found that the existence of a right of termination without cause for the lessor was necessary to avoid an insufficiently justified difference in treatment with respect to the lessee and that the current safeguards were

⁶ Committee on Economic, Social and Cultural Rights, general comments No. 4, para. 18, and No. 7, para. 16.

⁷ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 11.

sufficient to protect lessees. The State party points out that the right to property is protected by article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. The State party refers to the jurisprudence of the European Court of Human Rights on the need to distinguish between public and private lessors; in the case of a private lessor, States have the right to balance the rights of the parties concerned.⁸

4.8 With regard to the fight against discrimination, article 200 ter of the Brussels Housing Code now provides a list of particulars to be provided that are the only ones that can be requested by the lessor from the prospective tenant the lessor has ultimately selected. Consequently, neither the origin nor the nature of a person's resources can be taken into consideration by the lessor for refusing housing, to avoid any discrimination linked to the status of the lessee (social, professional or other), which is prohibited by law.

4.9 Lastly, the State party argues that the right to adequate housing includes a right to housing after eviction, pursuant to which the State party must implement all necessary measures, to the extent resources permit, to provide alternative housing. The State party points out that, in this particular case, the author was offered assistance on several occasions. Indeed, on 4 July 2018, before the eviction, the author was registered as an applicant with the Etterbeek Social Housing Agency and the Property Management Authority. In October 2018, social services offered their assistance to the author, who refused any alternative to remaining in his home. On 16 October 2018, the Etterbeek Board of Burgomasters and Deputy Burgomasters reminded the author that he could receive assistance from the commune's social services to find emergency temporary housing. The author also refused any assistance on the day of the eviction, stating that he would be staying with an acquaintance. Lastly, on 6 November 2018, the social welfare investigation unit of the housing inspectorate of the Brussels Regional Public Service contacted the author to offer its assistance, which the author refused. The State party emphasizes that it is not able to give the author priority over those on the waiting list for social housing, for fear of creating a considerable precedent at variance with the principle of equal treatment of applicants for rented accommodation.

4.10 Furthermore, the State party indicates that it could not object to the author's eviction, since the court decision on which it was based had become final and enforceable. The State party has therefore taken all possible measures to provide the author with temporary accommodation or assistance in finding accommodation.

4.11 The State party thus emphasizes, on the one hand, that the person concerned placed himself in a difficult situation given that the termination of his lease was in keeping with the law in force and, on the other hand, that the guarantees provided by the national judges are in conformity with the obligations arising from article 11 of the Covenant.

Author's comments on the State party's observations

5.1 In comments dated 1 October 2019, the author points out that, as the appeal in cassation has no suspensive effect, he could not wait until the end of the cassation proceedings before submitting a request for interim measures to the Committee.

5.2 Furthermore, the author argues that, contrary to the State party's contention, he did not abuse his right to submit a communication since it was not he who put himself in a difficult situation.

5.3 The author considers the domestic legislation on residential leases to be contrary to the right to adequate housing because of the possibility for the lessor to terminate the contract without cause, provided that notice and compensation are given. The author indicates that this legislation is being used by owners to relet their property at a much higher rent, leading to an unprecedented rise in rent levels and a housing crisis in Brussels.⁹ He points out that more than 50,000 families are on a waiting list for social housing. He adds that, in this

⁸ See the European Court of Human Rights, *Vrzić v. Croatia*, application No. 4777/13, judgment, 12 July 2016; and European Court of Human Rights, *F.J.M. v. the United Kingdom*, application No. 76202/16, decision, 6 November 2018, para. 40.

⁹ See Observatoire de la santé et du social de Bruxelles-Capitale, *Baromètre social, rapport Bruxellois sur l'état de la pauvreté – 2018*, Brussels, Common Community Commission, 2018.

particular case, whereas his rent was €520 a month, the apartment is now being let for €900.¹⁰ Furthermore, the author indicates that national legislation does not specifically protect older persons, contrary to what is done in France and Quebec. He makes clear that older persons are particularly vulnerable when it comes to forced evictions because of the risks to their health and situation. Furthermore, national legislation does not provide for grace periods for evictions in the event that alternative accommodation has not been found.

5.4 The author points out that, following his eviction, his property was temporarily stored in poor conditions in a communal warehouse, from which it could only be removed in one go, making the author's access to his property temporarily impossible. He also states that some of his property was irreparably damaged as a result of these poor storage conditions, including his documents, photos, souvenirs, books and records. He stresses that such damage to his property constitutes an offence against his dignity and his physical and mental integrity.

5.5 Contrary to the State party's submission, the author considers that it did not take any effective measures to rehouse him. The Etterbeek Public Social Welfare Centre, which can only help the author in his search for housing, submitted a request for special dispensation so that the author could benefit from rehousing; this request was rejected. Moreover, the judge's decision to extend the time limit for eviction cannot replace the State party's obligation to rehouse the author. The author also argues that he has never refused any alternative other than remaining in his former home, since he registered with the Property Management Authority of the Etterbeek Social Housing Agency, among others. He also accepted the assistance of the Public Social Welfare Centre and contacted the Office of the Minister of Housing of the Brussels-Capital Region. The author indicates that no housing has been offered to him despite these steps, as the only alternatives proposed were transitional supported accommodation or homes for older persons; this cannot be considered adequate housing, since the terms used by the Committee refer to housing with a minimum of security of tenure, not temporary accommodation.

5.6 Lastly, the author emphasizes that the State party did not comply with the Committee's request for interim measures of 5 October 2018, even though it was in a position to suspend the execution of the eviction order, as the execution of the court decisions depends on the government. The author maintains that the State party could have launched discussions between the Brussels-Capital Region and the federal government to find a solution.

Third-party submission

6.1 On 28 November 2019, the Working Group on Communications, acting on behalf of the Committee, authorized the submission of the Equality Law Clinic of the Free University of Brussels,¹¹ in accordance with article 8 of the Optional Protocol, rule 14 of the provisional rules of procedure under the Optional Protocol and the Committee's guidance on third-party interventions.¹²

6.2 The Equality Law Clinic stresses that, according to the jurisprudence of the Constitutional Court, access to decent housing is, in Belgium, "a constitutional objective to be achieved progressively"¹³ and not a right. According to the Equality Law Clinic, the events took place in a socioeconomic context of sharply rising rents in the Brussels region,¹⁴ which has reduced the share of the rental stock accessible to the first six income deciles of the population, who are said to have access to less than one third of the rental market.¹⁵

¹⁰ Ibid.

¹¹ The members of the Equality Law Clinic who participated in the drafting of the third-party submission are Emmanuelle Bribosia, Hania Ouhnaoui and Isabelle Rorive.

¹² This guidance was adopted by the Committee at its fifty-ninth session and is available at the web page of the Committee.

¹³ Constitutional Court of Belgium, judgment No. 39/2020, 12 March 2020, para. B.12.1.

¹⁴ Centre interfédéral pour l'égalité des chances, *Baromètre de la diversité – Logement*, October 2014, pp. 18–19.

¹⁵ Marie-Laurence De Keersmaecker, *Observatoire des loyers : Enquête 2018*, Brussels, Société du logement de la Région de Bruxelles-Capitale, 2019, p. 46.

Furthermore, the list of households waiting for social housing is also said to have increased, as has the risk of poverty and social exclusion.¹⁶

6.3 The Equality Law Clinic recalls that the law applicable in the case in point allows for a lease to be terminated without cause. This constitutes an imbalance between the protection of the lessor's freedom to dispose of his or her property and that of the lessee's right to housing, to the detriment of the lessee. In this context of rising rents, such a provision gives rise to a practice in which lessors are said to terminate their contracts to relet the property for a higher rent. Moreover, Belgium is said to be an exception when it comes to such freedom to terminate leases in comparison with the civil legal systems of its neighbours.

6.4 The Equality Law Clinic considers that the case in question involves indirect discrimination of an intersectional nature based on the author's age and social status. First, the rate of people who have been subject to forced departure from their homes is higher among older persons. In 2018, persons 64 and over moved to another dwelling because they were forced to leave (end of lease) in 24 per cent of cases, whereas such moves accounted for 13 per cent of cases among persons between the ages of 45 and 64, 7 per cent among persons between the ages of 25 and 44 and 5 per cent among young persons under 25.¹⁷ Such overrepresentation of older persons is owing to a combination of vulnerabilities and difficulties faced by isolated older persons, who often find it impossible to move house to avoid eviction. In addition, older people often have been enjoying modest rents for decades, with the payment due being calculated on the basis of their former rent, and the amount is not sufficient to adapt to the changing housing market.

6.5 Furthermore, eviction has a disproportionate impact on low-income older persons who are more prone to age-related health problems, loss of independence and social isolation. These persons are therefore particularly susceptible to evictions, which cause disorientation, emotional collapse, stress, loss of bearings and weakening of social ties, in addition to the socioeconomic consequences of eviction. It is recalled that the author had a particular attachment to his home and that States were invited by recommendations Nos. 19 to 24 of the Vienna International Plan of Action on Ageing to help older persons to continue to live in their homes. The physical distance owing to a move generally leads to a break with the existing social network, which is not only due to geographical mobility, but also results "from successive disruptions (medium- or long-term insecurity, eviction, loss of property, loss of ties, etc.) and the stigma left by the various consequences and feelings associated with the experience of eviction".¹⁸ On this point, the Equality Law Clinic states that older persons are particularly affected because they are less mobile and move house less often than younger people. Consequently, while termination without cause and subsequent eviction has an impact on all categories of persons, the effect of such measures is devastating for the vulnerable category to which the author belongs. It must therefore be found that the State party's failure to take action to protect the author against arbitrary eviction constitutes discrimination contrary to articles 2 (2) and 11 (1) of the Covenant.

6.6 Lastly, the Equality Law Clinic considers that, on one hand, there must be a reasonable justification for any eviction, which the tenant must be able to challenge in court; on the other, internal mechanisms must be put in place to protect vulnerable persons, such as disadvantaged and isolated older persons, from unnecessary evictions, particularly in situations where there has been no breach of contract on their part.

¹⁶ Observatoire de la santé et du social de Bruxelles, *Baromètre social : rapport Bruxellois sur l'état de la pauvreté – 2019*, Brussels, Common Community Commission, 2019, pp. 18, 70 and 71.

¹⁷ Marie-Laurence De Keersmaecker, *Observatoire des loyers : enquête 2018*, Brussels, Société du logement de la Région de Bruxelles-Capitale, 2019, pp. 56–57.

¹⁸ Observatoire de la santé et du social de Bruxelles-Capitale, *Précarités, mal-logement et expulsions domiciliaires en région bruxelloise : rapport bruxellois sur l'état de la pauvreté 2018*, Brussels, Common Community Commission, 2019, p. 128. A survey carried out by the Matexi property developer in collaboration with the Catholic University of Louvain shows that "61 per cent of respondents say that knowing your neighbours and getting on well with them is the most important thing in your place of residence"; Matexi, "Les Belges et leur quartier", 26 December 2016.

B. Consideration of admissibility

7.1 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 the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee takes note of the State party's argument that the communication is inadmissible by virtue of article 3 (1) of the Optional Protocol given that the author has not exhausted all domestic remedies, having failed to lodge an appeal in cassation before applying to the Committee. The Committee notes, however, that the author presented his case to the Committee before appealing to the Court of Cassation as a matter of urgency, as he considered that interim measures were necessary to avoid being evicted. In any case, the author lodged an appeal in the end, and the Court of Cassation examined and rejected the appeal on 4 November 2020. Accordingly, the Committee considers that the author has exhausted all available domestic remedies and that it is not precluded by article 3 (1) of the Optional Protocol from examining the present communication.

7.3 The Committee also takes note of the State party's argument that the communication constitutes an abuse of right of submission, as the author, as a tenant, could not expect to remain in his dwelling for life. The Committee notes, however, that the author's complaint concerns the conditions of eviction and its compliance with the provisions of the Covenant. Accordingly, the Committee considers that it is not precluded by article 3 (2) (f) of the Optional Protocol from examining the present communication.

7.4 The Committee notes that 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

8.1 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.

8.2 The Committee proceeds to determine which facts may be considered proven. On 21 August 2017, the author received six months' notice from the owner of the apartment he was renting that his tenancy agreement would be terminated in return for the payment of compensation equivalent to six months' rent. The termination of the contract was ratified at first instance and on appeal by the first division of the French-speaking court of first instance of Brussels. However, the court granted the author a period of grace to leave the premises, expiring on 30 September 2018. On 17 September 2018, a bailiff informed the author that his eviction was scheduled for 8 October 2018. The eviction was postponed until 17 October 2018 owing to the author's hospitalization.

8.3 The Committee notes that, on 17 October 2018, the author was evicted from his home. The apartment was later let at a higher price. Since then, the author has been staying with acquaintances, has registered with at least one social housing authority and has communicated with the authorities about his needs, which he estimates to be an apartment of about 80 m² where he could keep his belongings and put up his granddaughters when they visit from Canada and, if possible, a small terrace. The author has only received proposals for housing in transitional supported accommodation or homes for older persons, which he does not consider to be adequate for his needs.

8.4 The Committee also notes that the author claims that his eviction constitutes a violation of his right to adequate housing, as no consideration was given either to the fact that he had no alternative accommodation or to the consequences of the eviction, and the termination of lease agreements without cause should not be possible. The State party alleges that the eviction was legitimate, the result of a judicial process with proper safeguards, and that the author did not cooperate, having refused the proposals for emergency housing. The

State party considers that it has implemented all necessary measures, to the extent resources permitted, to provide alternative housing.

8.5 In the light of the facts that the Committee has deemed to be relevant, and of the observations made by the parties, the questions raised by the communication are as follows: (a) whether the eviction of the author constitutes a violation of the right to adequate housing under article 11 (1) of the Covenant taking into account the applicable regulations that allow for the termination of the lease without cause; and (b) whether the State's response to the author's requests for housing constitutes a violation of the right to adequate alternative housing. To answer these questions, the Committee begins by recalling its jurisprudence on protection against forced eviction. It then analyses the specific case of the author's eviction and addresses the issues raised in the communication.

Protection against forced eviction

9.1 The right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights¹⁹ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.²⁰ The right to housing should be ensured to all persons irrespective of income or access to economic resources²¹ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.²²

9.2 Forced evictions are *prima facie* incompatible with the Covenant on Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances.²³ 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 specifies the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.²⁵

9.3 Thus, in order for an eviction to be justifiable, it must meet a number of requirements. Firstly, the possibility of eviction must be determined by law. Secondly, it must promote the general welfare in a democratic society. Thirdly, it must be proportionate to the aim pursued. Fourthly, it must be necessary, in that, where there are several means reasonably capable of achieving the legitimate aim of the limitation, the one that is the least restrictive must be selected. Lastly, the benefits of the limitation in promoting the general welfare must outweigh the impact of the limitation on the enjoyment of the right. The more serious the impact on the author's rights under the Covenant, the greater the scrutiny that must be given to the grounds invoked for such a limitation. The availability of adequate alternative housing, the personal circumstances of the occupants and their dependants and their cooperation with the authorities in seeking suitable solutions are crucial factors in such an analysis. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.²⁶ The State party will therefore be committing a violation of the right to adequate housing if it stipulates that a person whose lease agreement is terminated must be evicted immediately, without regard to the circumstances in which the eviction order would be carried out.²⁷ The analysis of the proportionality of the measure must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. This authority must analyse whether the

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 1.

²⁰ *Ibid.*, paras. 7 and 9.

²¹ *Ibid.*, para. 7.

²² *Ibid.*, para. 12.

²³ *Ibid.*, para. 18, and general comment No. 7 (1997), para. 1.

²⁴ *Ben Djazia and Bellili v. Spain*, para. 13.4.

²⁵ *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

²⁶ *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 11.5.

²⁷ *Ibid.*, para. 11.7.

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.²⁸

9.4 In addition, there must be no alternative means or measures available that would encroach less on the right to housing, there must be a real opportunity for genuine prior consultation between the authorities and the person concerned, and the person concerned must not be left in or exposed to a situation constituting a violation of other Covenant or human rights.²⁹

Duty of States to provide alternative housing to persons if necessary

10.1 In particular, evictions should not result in a person being left 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.³⁰ 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.³¹ 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.³²

10.2 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.³³ However, all measures adopted should be deliberate and concrete and targeted as clearly as possible towards fulfilling this right in the swiftest and most effective possible manner.³⁴ Policies on alternative housing in cases of eviction should be commensurate with the state of necessity of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.³⁵

10.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; a location that 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.³⁶

10.4 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

²⁸ Ibid.

²⁹ *Ben Djazia and Bellili v. Spain*, para. 15.1.

³⁰ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 16.

³¹ *Ben Djazia and Bellili v. Spain*, para. 15.2.

³² Ibid., para. 15.5. See also E/C.12/2007/1.

³³ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (c). See also *ibid.*, para. 13.

³⁴ Committee on Economic, Social and Cultural Rights, 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 (HRC/NONE/2012/76).

³⁵ See, for example A/HRC/31/54, paras. 28–38.

³⁶ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8.

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. It must also take account of the right of members of a family not to be separated³⁷ and to enjoy a reasonable level of privacy.

Analysis of the proportionality of the author's eviction and the applicable law

11.1 The Committee will consider whether the author's eviction constituted a violation of his right to adequate housing or whether the authorities' intervention constituted a justified limitation on the right to adequate housing in accordance with article 4 of the Covenant.

11.2 The Committee notes that the author was informed of the termination of the lease agreement in accordance with the law in force, which provided him with six months' notice and compensation amounting to six months' rent. This termination of the agreement was reviewed by three judicial bodies, before which the author was able to present all his allegations with the assistance of a lawyer, which were examined with adequate safeguards.

11.3 The Committee takes note of the State party's argument that it could not object to the author's eviction, as the termination of the lease was in keeping with legislation that was foreseeable and proportionate to the circumstances, and that the judicial decision ordering the eviction had become final and enforceable. The Committee recognizes the legitimate interest of the State party to legislate about lease agreements and to ensure respect for the law in force and the protection of all existing rights in its legal system, insofar as this is not contrary to the rights enshrined in the Covenant. As the author's lease agreement was terminated in accordance with the law in force, as was confirmed by the three judicial bodies that examined the case, the Committee considers that there were grounds for the eviction order.

11.4 The Committee notes that the author also considers that the currently applicable legislation on leases in force in the State party does not allow for the maintenance of housing prices at an affordable level and that, moreover, this legislation purportedly has a disproportionately negative impact on older persons, as it allows for termination without cause. The Committee notes the information provided by the intervening third party suggesting that people aged 64 and over are more affected by the termination of a lease agreement against their will than people in other age groups and that this has negative impact on these people (see para. 6.5 above). The third party also argued that this situation constituted indirect discrimination of an intersectional nature based on age and social condition. The Committee recalls that steps should be taken by States parties to ensure that, in general, the percentage of housing-related costs is not disproportionate with respect to income levels. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases³⁸ and against any undesirable effects that such legislation may have on vulnerable groups, such as older persons. The Committee recalls that States parties may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant, in particular the right to adequate housing, which includes the regulation of the rental housing market.

11.5 The Committee recalls that, under article 5 (2) of the Covenant, no restriction upon or derogation from any of the fundamental human rights recognized or existing in any country under the law, conventions, regulations or custom are to be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent. This includes the right to private property recognized by the State party's legislation and by article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the State party. However, States parties would violate their duty to protect Covenant rights by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or that has the foreseeable effect of leading to such

³⁷ *López Albán v. Spain*, para. 9.3.

³⁸ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (c).

rights being abused.³⁹ Therefore, the objective of housing-related policies must be to ensure access to adequate housing. These policies must provide sufficient protection to tenants to ensure the essential elements of the right to adequate housing, such as legal security of tenure, affordability or habitability.⁴⁰

11.6 The Committee recalls that States parties are required to take special measures, to the maximum of available resources, to ensure the full enjoyment by older persons of all the rights contained in the Covenant.⁴¹ The Committee also recalls that the Vienna International Plan of Action on Ageing clearly states in its recommendation No. 19 that housing for older persons must be viewed as more than mere shelter and that, in addition to physical significance, it has psychological and social significance that should be taken into account. Accordingly, national policies should help older persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them.⁴² Without these special measures, general policies that may be appropriate for the general population may have a disproportionately negative impact on the enjoyment of the rights contained in the Covenant on older persons, especially those who find themselves in a difficult socioeconomic situation. In addition, for older persons, renting housing may be more important than for the rest of the population, in particular if they have lived in the housing for a long time, since they have been able to build up a social network in the neighbourhood and the change of housing may be disruptive.

Rigidity of the law and its disproportionate impact on the author

12.1 Taking these considerations into account, the Committee considers that a law that periodically allows landlords to terminate the lease without having to provide a reason and without any other guarantee or compensation could have a negative impact on the security of tenure and contribute to a substantial *de facto* increase in prices in the rental market, which could affect the affordability of housing. Therefore, such regulations would be contrary to the Covenant. The Committee notes that the law applicable in the State party, in the present case, allows the landlord to terminate the lease without cause, but at the same time provides important safeguards to the tenant: the lease cannot be terminated at any time and, as was the case with the author, the landlord must give notice and pay compensation. Furthermore, in some cases, the judge may grant an extension to protect tenants in vulnerable situations. These safeguards for tenants make this legislation, in the abstract and in general terms, compatible with the Covenant and the right to adequate housing.

12.2 The Committee notes, however, that people over the age of 64 are more affected by lease terminations than the rest of the population (para. 6.5 above). Therefore, the inflexible application of this law, in the specific context of rising rents in the Brussels-Capital Region (para. 6.2 above) and taking into account the specific needs of older persons (para. 11.6 above), could have a disproportionately negative impact on low-income older people. This disproportionate impact may be caused jointly by specific market conditions and the inflexible application of the regulatory framework.

12.3 Consequently, the possibility of a disproportionate impact of such a policy on the right to adequate housing of certain groups in vulnerable situations entails a double obligation for any State party that chooses such a regulatory framework. Firstly, the State party must establish a mechanism to monitor the impact of the application of the legal framework on the most vulnerable and marginalized groups in order to introduce the necessary adjustments to avoid a disproportionate impact that could imply a violation of the right to adequate housing for a specific group, such as older persons in socioeconomic difficulty. Second, the policy must include mechanisms and flexibility to ensure that the application of the legal framework does not have a disproportionate impact in certain cases.

12.4 The Committee considers in this particular case that neither the judicial authorities nor the social services have sufficiently taken into account the disproportionate impact that a

³⁹ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 18.

⁴⁰ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8.

⁴¹ Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995), para. 10.

⁴² *Ibid.*, para. 33.

forced moving of house could have on particularly vulnerable persons such as older persons living in a precarious economic situation. This is despite the fact that the author has lived in the same apartment for 25 years, has always fulfilled his contractual obligations and is now an older person with limited income who has strong social ties to his neighbourhood.

12.5 The Committee notes that various measures could have been adopted by the State party, to the maximum of its available resources, to mitigate the impact of the implementation of the legal framework on the author. For example, mediation could have been initiated to adjust the rent with financial support from the State party to make it affordable for the author. This possibility, or any other that would allow the author to remain in the dwelling, has not been explored due to the lack of flexibility in the law in this regard. This seems like a very reasonable option given the undisputed facts of this communication, namely that the landlord has kept the apartment rented at an increased rent. In this context, it would have been possible for the State party, if the law were not so rigid, to possibly subsidize, to the maximum of its available resources, the author so that he could stay in the apartment.

12.6 The Committee recalls that States parties must provide alternative accommodation to the evicted person to the maximum of their available resources (paras. 10.2–10.4 above). Thus, the conditions of alternative housing offered to the evicted person that are compatible with the obligations of States parties under the Covenant may vary from one State to another, depending on their level of development and the resources available to them. A dramatic change in accommodation for a person of the author's age would risk disrupting his lifestyle, which was the case for the author, as established by his psychiatrist. In this context, the author's request for alternative accommodation that would avoid breaking with his existing social network is not unreasonable, particularly given the fact that the State party is among the countries with the highest per capita income in the world.

12.7 The Committee notes that the author was offered two alternative housing options: supported transitional housing or a home for older persons. The author rejected these proposals, as they could not constitute an alternative suitable to his needs. In the circumstances described, the Committee considers that the offers made to the author of temporary accommodation or a home for older persons fall short of adequate temporary accommodation in view of the author's specific needs as an older person, especially since, as has been noted (para. 11.6 above), the application of the State party's legal framework allowing for termination of the lease agreement without cause places a particular burden on persons belonging to vulnerable groups in the housing market, i.e., groups that find it increasingly difficult to find adequate alternative housing in their urban environment. This is particularly true for low-income families with children and older persons, whose economic opportunities are extremely limited. While the State party has regulatory authority over leases, it is at the same time under the obligation to apply the necessary safeguards to ensure security of tenure, which will require adequate alternative accommodation.

12.8. In light of the information referred to in the preceding paragraphs, namely the existence of compensation and notice, but the inadequacy of the alternative accommodation proposed to the author and the disproportionate impact that the termination of the lease had on him as an older person with limited income, the Committee considers that, in this particular case, the rigid application of the legislative framework on leases in his case and the eviction procedure constitute a violation by the State party of the author's right to adequate housing, as set out in article 11 read alone and in conjunction with article 2 (2) of the Covenant.

12.9 Despite the fact that the author was evicted and a violation of his right to adequate housing has been found here, the Committee considers that the State party complied with the interim measures requested, since it offered the author what it considered, at the time and in good faith, to be an adequate alternative accommodation. Thus, the Committee concludes that no provision of the Optional Protocol has not been violated.

D. Conclusion and recommendations

13. On the basis of all the information provided and in the particular circumstances of this case, the Committee finds that the facts presented constitute a violation of the author's right to adequate housing.

14. The Committee, acting under article 9 (1) of the Optional Protocol, finds that the State party violated the author's right under article 11 (1) of the Covenant. In the light of the present Views, the Committee makes the following recommendations to the State party.

Recommendations in respect of the author

15. The State party is under an obligation to provide effective reparation to the author, in particular: (a) if the author does not have adequate housing, to reassess the author's state of necessity with a view to allocating social housing to him or providing him with any other measure enabling him to live in adequate housing in accordance with the criteria set out in the present Views; (b) to compensate him for the violations suffered; (c) to reimburse him for the legal costs reasonably incurred in submitting this communication.

General recommendations

16. 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:

(a) To review its current legislation that allows the landlord to terminate the lease without cause in order to introduce flexibility and special measures to avoid a disproportionate impact on the right to adequate housing of disadvantaged groups, such as older persons in a disadvantaged socioeconomic situation;

(b) To regularly evaluate legislation that allows the landlord to terminate the lease without cause in order to assess the overall impact of these regulations on the enjoyment of the right to adequate housing, in particular for disadvantaged groups, and, if necessary, make the necessary adjustments to protect this right;

(c) To take the necessary measures, to the maximum of available resources, to ensure that disadvantaged groups, such as older persons in unfavourable socioeconomic situations, who are evicted from their homes, have access to alternative accommodation that meet their particular needs and provide them with stability and security commensurate with their age and circumstances.

17. 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.