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Committee on Economic, Social and Cultural Rights

Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 92/2019*

<i>Communication submitted by:</i>	Ángela Sariago Rodríguez and Ionut-Cosmin Dincă (represented by counsel María Pilar Galán Luján of Plataforma de Afectados por la Hipoteca of Oviedo)
<i>Alleged victims:</i>	The authors and their son
<i>State party:</i>	Spain
<i>Date of communication:</i>	4 January 2019 (initial submission)
<i>Date of adoption of decision:</i>	12 October 2021
<i>Subject matter:</i>	Eviction of the authors from their home
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11
<i>Article of the Optional Protocol:</i>	3 (1) and (2) (e)

1.1 The authors of the communication are Ángela Sariago Rodríguez, a Spanish national born in 1998, and Ionut-Cosmin Dincă, a Romanian national born in 1996. The authors are acting on their own behalf and on behalf of their son (A.D.S.), a Spanish national born in 2018. They claim that the State party has violated their rights under article 11 of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The authors are represented by counsel.

1.2 On 7 January 2019, the Committee, acting through its working group on communications, registered the communication and, noting the imminence of the eviction and the alleged lack of alternative housing and risk of irreparable damage, requested the State party to suspend the authors' eviction while the communication was being considered or, alternatively, to find them adequate housing by consulting with them in good faith in order to prevent irreparable damage to them and their son. When registering the communication, the Committee requested the authors to submit, by 21 January 2019, a detailed explanation of the reasons for their refusal to stay in the hostel offered by social services.

1.3 In the present decision, the Committee first summarizes the information and the arguments submitted by the parties, without taking a position. It then considers the admissibility of the communication and, lastly, sets out its conclusions and 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

Factual background¹

2.1 On an unspecified date in March 2018, the authors moved into a property that they rented for €370 per month, subject to a rental contract. Shortly thereafter, the authors stopped paying the rent and, on 2 October 2018, Oviedo Court of First Instance No. 8 ordered that the landlady's claim against Ms. Sariego Rodríguez be admitted. In the order, the court instructed Ms. Sariego Rodríguez to vacate the property within 10 days. It also scheduled a hearing for 25 October 2018 and set a deadline of 22 November 2018 for the eviction. Ms. Sariego Rodríguez did not appear at the hearing in order to challenge the claim² and did not apply for free legal assistance.

2.2 On 5 November 2018, Ms. Sariego Rodríguez contacted the Ventanielles social work unit of Oviedo social services to inform them of her situation and the eviction order. According to the authors, social services did not provide her with any alternative housing.³ On 20 November 2018, Ms. Sariego Rodríguez brought her situation to the attention of a meeting of Plataforma de Afectados por la Hipoteca – Stop Desahucios, a non-governmental organization that assists persons struggling to pay mortgages or rent, in Oviedo. On 21 November 2018, with the support of this association, she submitted a request for the suspension of the eviction order to Oviedo Court of First Instance No. 8. On the same day, the court agreed to suspend the order for one month and requested a report on the family's situation and vulnerability from the local authority's social services department. On the same day, Ms. Sariego Rodríguez applied to the government of the Principality of Asturias for access to public housing on grounds of social emergency.⁴

2.3 On 23 November 2018, social services issued the report requested by the court, which stated that Ms. Sariego Rodríguez was actively seeking employment and was regularly attending her support programme. According to the report, she was offered accommodation at the Cano Mata Hostel for Transients in Oviedo. However, she turned this offer down, explaining that she, her partner and their child could stay with family members despite the lack of space.⁵ On 28 November 2018, in the light of the social services report, the court set 8 January 2019 as the final date for the authors' eviction. On 26 December 2018, representatives of Plataforma de Afectados por la Hipoteca met with the head of the Department of Social Services and Rights of the government of the Principality of Asturias, who proposed that the authors should resolve their situation either by renting another property or staying at the Cano Mata Hostel for Transients.

2.4 The authors affirm that the family's only income is the basic social allowance of €642 per month allocated to Ms. Sariego Rodríguez. They claim that they have tried unsuccessfully to rent another property on the private market. However, the monthly rents constitute more than 30 per cent of their limited income. They also state that landlords request guarantees in the form of several advance monthly payments and the presentation of a payslip proving that the would-be tenant has sufficient income to cover the rent.

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 Ms. Sariego Rodríguez explains that she failed to appear because she was unaware of her rights.

³ The authors do not provide any documentation to support this claim. According to the social services reports, Ms. Sariego Rodríguez's situation was continually monitored from February 2018 onward. Various proposals were put to her in order to address her concerns.

⁴ The application was filed under article 19 of Decree No. 25/2013 of 22 May, regulating the allocation of housing in the Principality of Asturias, and was based on the family's financial circumstances and the fact that their eviction would result in their losing their current home because of a force majeure event.

⁵ The authors state that they turned down the offer of accommodation at the hostel because it would not have provided the minimum security of tenure appropriate to their needs and those of their family.

The complaint

3.1 The authors maintain that their eviction, without appropriate alternative housing, would violate their right to adequate housing under article 11 of the Covenant. The authors stress that protection against forced eviction is a key element of the right to adequate housing, that such protection is closely linked to security of tenure, and that, as noted by the Committee in its general comment No. 7 (1997) on forced evictions, 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 is available.

3.2 In the authors' view, the Cano Mata Hostel for Transients is not an acceptable housing alternative as it is temporary accommodation that does not meet the minimum requirements of stability and security of tenure that they need in order to develop their life plans. They explain that the Government of the State party, and the government of the Principality of Asturias, are violating the Covenant by failing to adopt measures, to the maximum of their resources, to achieve progressively the full realization of the right to housing.⁶

3.3 The authors request the Committee to urge the State party to recognize and effectively guarantee their right to housing by providing them with secure access to a habitable property suited to their needs in exchange for an affordable rent appropriate to their financial situation.

Additional comments submitted by the authors

4.1 On 18 January 2019, in response to the request made by the Committee on 7 January 2019, when the communication was registered, the authors submitted additional information to support their assertion that the Cano Mata Hostel for Transients was unsuitable as accommodation. They explain that the hostel is intended to support and promote the social integration of homeless persons, providing short-term cover for their basic needs for food, accommodation and hygiene and enabling them to carry out occupational activities and various other tasks. The hostel offers three different forms of accommodation and support, functioning as a day centre, open from 9.30 a.m. to 12.30 p.m. and from 4 to 7.30 p.m., a hostel where transients can stay for three to five days, and a shelter that includes three small apartments measuring 30 m² in which families with dependent minors who are facing a situation of social emergency may stay on a temporary basis for up to three months, with some exceptions.

4.2 The authors state that the hostel accommodates a very particular type of person, that is, persons in a situation of extreme housing exclusion who are affected by unemployment, social uprooting, family breakdown, isolation and addiction. They explain that such persons have little chance of finding employment and are physically impaired as they have mental health problems or serious chronic illnesses such as AIDS, hepatitis, cirrhosis and pneumonia. The authors add that these persons, especially those who have problems with addiction, are often involved in petty crime. Staying in the hostel would bring the authors into daily contact with its users and would therefore pose obvious risks to their well-being and their personal and social development, especially in the case of their son.

4.3 The authors explain that they know nothing about the characteristics, habitability or facilities of the apartment in which they would be living and that this accommodation would be temporary, lasting for a maximum of three months while they found stable alternative housing. However, as the manager of the hostel has stated in the press, this period is always extended.

4.4 The authors explain that the at-risk-of-poverty threshold in Asturias is €785 per month, while the severe poverty threshold is €355 per month. They add that the average rent in

⁶ The authors cite various figures in support of this point. With regard to the Principality of Asturias, the authors mention that, in 2014, around 110,000 Asturian households (one in every four) were at risk of housing exclusion; that 500 persons in Asturias are in a situation of extreme housing exclusion; that around 1,000 evictions for non-payment of mortgages or rent were carried out in Asturias in 2016; and that there are 82,000 empty dwellings in the Principality. They add that, since 2009, the government of the Principality of Asturias has made cuts to the public resources allocated to implement housing policy. The authors provide further information on the Government of the State party and the housing situation throughout its territory.

Oviedo is between €350 and €400 per month, or around 60 per cent of their income, which completely excludes them from private-sector housing. Therefore, if they agreed to stay in the hostel on a temporary basis, this temporary situation would become indefinite as the family cannot afford private-sector housing.

4.5 The authors explain that they were evicted on 8 January 2019 and that, in the absence of any alternative housing, Ms. Sariego Rodríguez was taken in by a friend while Mr. Dincă opted to live with his parents and child.

State party's observations on admissibility and the merits

5.1 In its observations of 6 September 2019, the State party requests the Committee to find the communication inadmissible or, alternatively, to find that none of the facts of the case constitute a violation of the Covenant.

5.2 The State party stresses that the authors did not appear at the eviction hearing or apply for free legal assistance in connection with the hearing. Furthermore, aside from filing an application for the suspension of the eviction order, which the court granted, they have not pursued any domestic remedy against it. The State party affirms that Ms. Sariego Rodríguez did not apply for public housing until 21 November 2018, that is, one day before the date initially scheduled for the eviction. It adds that, under the current regulations, applications for public housing must contain a municipal report attesting to personal, financial or social circumstances that require special attention.⁷ It explains that the authors' criteria cannot take precedence over the legal criteria governing the allocation of public housing.

5.3 The State party explains that, since 3 September 2018, when Ms. Sariego Rodríguez informed social services that her landlady had made a claim for unpaid rent, the local and regional authorities have taken coordinated measures, to the extent of their powers and insofar as their resources permit, to provide her with decent housing in compliance with the Committee's general comments No. 4 (1991) and No. 7 (1997). It states that: (a) diligent action was taken to ensure that she received financial assistance to cover her basic needs (between November and December 2018, this assistance exceeded €3,700);⁸ (b) she was offered financial assistance to enable her to rent private-sector housing;⁹ (c) action was taken in coordination with the court to obtain the relevant reports;¹⁰ and (d) arrangements were made to provide the authors with temporary alternative housing in the event that they were definitively evicted.¹¹ The State party explains that, thanks to the social services report of 23 November 2018, the court was aware of the amounts that Ms. Sariego Rodríguez had received and had ruled that the eviction would take place on 8 January 2019 because she could not be considered financially vulnerable. The same report, which was sent to the court, states that, on 7 November 2018, Ms. Sariego Rodríguez rejected the offer of temporary accommodation at the Cano Mata Hostel on the grounds that she could stay with family members. It also states that, on 15 November 2018, she claimed to have made a verbal agreement to rent other accommodation that adequately met her housing needs.

⁷ Spain, Decree No. 25/2013 of 22 May, art. 19, *Official Gazette of the Principality of Asturias*, No. 124.

⁸ According to the social services report, Ms. Sariego Rodríguez received €3,702.14 in social welfare assistance between the months of November and December 2018. This included four basic social allowance payments amounting to €641.84, €423.50 in financial assistance for energy bills, €611.28 in emergency social aid, and €100 per month in financial aid for child nutrition.

⁹ According to the social services report, Ms. Sariego Rodríguez was offered professional help in her search for a private rental property and support in connection with the different rental possibilities that she identified. She was also assured that the municipality was willing to provide her with financial support.

¹⁰ When it ruled to suspend the eviction, Oviedo Court of First Instance No. 8 requested that social services issue a report, which was sent on 23 November 2018.

¹¹ The report of 23 November 2018 sets out the various sums of money that Ms. Sariego Rodríguez received in the form of welfare payments. It also states that, on 7 November 2018, she rejected the offer of temporary accommodation in one of the family apartments in the Cano Mata Hostel on the grounds that she could stay with her family. Furthermore, it stated that, on 23 November 2018, Ms. Sariego Rodríguez claimed to have made a verbal agreement to rent a property in the municipality of Oviedo but had not signed a formal contract as at that date.

5.4 The State party argues that the authors have failed to acknowledge that the appropriate housing solution, as has been proposed to them, is that they rent accommodation on the private market and receive State support to help them to pay the rent, on the condition that they demonstrate that they are using this public money for its intended purpose. The State party explains that the private rental market in the Principality of Asturias is affordable in that the average rent is €321 per month and State support, which Ms. Sariego Rodríguez has been offered, covers at least 50 per cent of the rent and, in some cases, up to 100 per cent.¹² However, both Ms. Sariego Rodríguez and her representatives at Plataforma de Afectados por la Hipoteca have continued to affirm that the only acceptable solution would be for the Principality of Asturias to provide her with public housing. According to the social services report of 15 January 2019, on 29 November 2018 she was informed that she would be able to rent a property with the sums that she had received that month. However, she stated that she had pulled out of a verbal agreement to rent a property because Plataforma de Afectados por la Hipoteca had told her that she could be allocated emergency housing. The report concludes by stating that, although social services offered support for the various rental possibilities open to Ms. Sariego Rodríguez, she explained that she had decided not to take any of them up as an association had assured her that she could obtain emergency social housing.

5.5 The State party adds that there would have been no need for the authors to take up the temporary and provisional offer of accommodation at the Cano Mata Hostel, which includes a private family apartment, if they had continued to actively search for private-sector housing and had found other accommodation before the eviction was carried out. The social services report of 15 January 2019 states that, on 13 December 2018, with the eviction looming and Ms. Sariego Rodríguez refusing to cooperate and accept the offer of professional help to find a rental property, she was reminded that, as a last resort and a matter of urgency, she could stay in an apartment at the hostel. As on previous occasions, she rejected this offer and stated that she would stay with someone that she knew. The State party notes that, on 4 January 2019, she rejected this option again, telling her social worker that she had a pet and that the hostel did not allow pets to stay there.¹³ The report also states that social services have often worked with families placed in this hostel, which is subsidized by Oviedo City Council, without ever having noted the lack of security referred to in the authors' written submission.

5.6 The State party contends that the communication is inadmissible because the authors have failed to exhaust the domestic remedies available to them and have abused the right to submit a communication. With regard to the failure to exhaust domestic remedies, the State party explains that the application for public housing is still pending and that there is no record of the authors having taken any action since the application was made in November 2018. With regard to the authors' abuse of the right to submit a communication, the State party affirms that, as is evident, it has devoted huge amounts of public resources to assisting Ms. Sariego Rodríguez with each and every problem that she has faced, adding that she rejected many of these offers of assistance, including, in particular, the proposed solution to her housing problems.

5.7 With regard to the merits of the communication, the State party explains that the authors are not alleging a violation of any judicial safeguards in the eviction proceedings. Rather, they are alleging a violation of article 11 because their application was refused and/or its processing has been delayed. However, this is not the case as the authors did not apply for public housing until the day before the date initially scheduled for their eviction. It adds that the State party's actions, and the measures taken, must be considered in the light of this application and the authors' own conduct.

5.8 With regard to the authors' rights under article 11 (1) of the Covenant, the State party affirms that the family's needs in the areas of health, education, basic income and free access to justice are covered through public resources. Only their housing needs have not yet been

¹² The State party submits a report issued by the Principality of Asturias that contests the data cited by the authors in connection with public housing, evictions and other matters (see footnote 9 above).

¹³ The report issued by Oviedo social services on 15 January 2019 stated that, on 4 January 2019, Ms. Sariego Rodríguez had said that she would not stay at the hostel (which, as she was reminded once again, would be a temporary measure of last resort) because she owned a dog.

met. However, the facts show that these needs were covered, on a temporary basis, while their application for housing was being processed, but that they rejected the solution proposed.

5.9 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,¹⁴ 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,¹⁵ the right to housing is “a constitutional mandate or guiding principle” that calls primarily for social measures but does not in itself constitute a separate area of competence of the State. It is therefore the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land in line with the common good and in order to prevent speculation. This right, which is to be realized progressively, is thus fully protected by the State party in line with its international legal obligations.

5.10 Following the same reasoning on the nature of the State party’s obligations under article 11 (1) of the Covenant, the State party considers that the extent to which it has complied with these obligations should be assessed in the light of three parameters: (a) the minimum resources that a person requires to obtain access to private-sector housing; (b) the number of persons below this threshold; and (c) the funds made available in the budget to cover the shortfall. It is therefore necessary to assess whether the State party uses all the financial resources at its disposal to cover this shortfall and, if its resources are insufficient for this purpose, whether its limited resources have been applied in accordance with objective and non-discriminatory criteria and in order of need. The same reasoning is used by the Committee in its general comment No. 7 (1997), in which it considers that, in the event that a lawful eviction results in homelessness, the State party concerned “must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing (...) is available”.

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

5.12 The State party details the decisions that have been taken to protect the right to housing. It has taken measures to facilitate access to the private housing market, including tax relief for property owners and rental subsidies for tenants. In addition, policies have been introduced to keep property owners from withdrawing from the private housing market, including a freeze on evictions in cases of non-payment of mortgage instalments and the adoption of a code of good practices, which is followed by more than 93 financial institutions. In order to prevent emergencies arising from legitimate evictions being carried out before alternative permanent housing is available for the persons concerned, Royal Decree-Law No. 7/2019 establishes a mechanism whereby vulnerable persons may have their eviction

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

¹⁵ Constitutional Court judgments No. 152/1988, No. 7/2010 and No. 32/2019.

suspended for one month if the owner is a private individual or three months if the owner is a legal entity. In addition, municipal social services are responsible for assessing and following up on the needs of families, identifying and addressing temporary housing emergencies and working in coordination with the relevant autonomous communities to facilitate an orderly transition to the emergency housing regime. The State party has also taken steps to promote the maintenance of a sufficient stock of public housing, establishing in urban planning legislation that, where private land is to be used for urban development, part of the land must be made available for public purposes free of charge, and financing the construction of social housing on such land. Lastly, the State party has established objective criteria for assessing the needs of applicants for social housing and allocating such housing.

5.13 The State party emphasizes that, in the present case: (a) the authors received, and are receiving, extensive assistance from the public authorities that, since November 2018, has afforded them a high level of income relative to the cost of renting property in the Principality of Asturias; (b) the authors rejected housing options on the dubious grounds that they would not have been suitable for their pet; (c) there are family members with whom the authors can stay; and (d) the authors applied for public housing only when they were about to be evicted (this application is still being processed). The State party therefore requests the Committee to declare the communication inadmissible or, in the alternative, to dismiss it on the merits.

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

6.1 In their comments of 22 January 2020, the authors claim that Ms. Sariego Rodríguez was not informed of her rights as a defendant and for this reason did not appear at the relevant hearing and did not apply for free legal assistance.

6.2 With regard to their income, the authors note that, aside from outstanding basic social allowance payments and other limited one-off benefits, their regular income is €641.84 per month, which Ms. Sariego Rodríguez receives in the form of a basic social allowance. The authors reiterate that, in 2018, the at-risk-of-poverty threshold in Asturias was €796.25 per month per consumption unit, while the severe poverty threshold was €398.13 per month.¹⁶ They explain that their family's income, when weighted according to its members, is €356.38 per month, which means that they are not only financially vulnerable but also below the severe poverty threshold.¹⁷ The authors affirm that the court's decision to issue an eviction order, and the refusal of Oviedo City Council and the government of the Principality of Asturias to provide adequate alternative housing, condemn them to marginalization and social exclusion. They therefore add that, in submitting their communication, they cannot be considered to have abused the right to take this action.

6.3 According to the authors, Plataforma de Afectados por la Hipoteca of Oviedo has always maintained that the only dignified and viable alternative to the evictions of families at risk of housing exclusion is to allocate them public housing in exchange for an affordable rent that is proportionate to their income, as such families cannot afford to rent private-sector housing. The authors explain that, if the average monthly rent cited by the State party of €321 per month in 2017 is adjusted in accordance with the consumer price index, this would be €329.67 per month in 2018. This constitutes more than half of the authors' income (51.4 per cent). The authors explain that the rental assistance system adopted by the Principality of Asturias is not effective in ensuring access to decent and adequate housing for the most vulnerable members of the public. This assistance has the effect of raising rental prices and is also insufficient, given that 4,385 of the 13,345 applications for rental assistance submitted in Asturias in 2018 were refused on the grounds that insufficient funds were available, despite

¹⁶ Llano Ortiz, Juan Carlos, "El estado de la pobreza. Seguimiento del indicador de pobreza y exclusión social en España 2008–2018". Ninth report, European Anti-Poverty Network, Spain, 2019. Available at https://www.eapn.es/estadodepobreza/ARCHIVO/documentos/Informe_AROPE_2019_ASTURIAS.pdf.

¹⁷ The authors explain that, in order to calculate income per unit of consumption, the European Anti-Poverty Network uses the Organisation for Economic Co-operation and Development's modified equivalence scale, which assigns a value of one unit of consumption to the head of the household, 0.5 consumption units to each additional adult member (persons aged 14 years and over) and 0.3 consumption units to each child.

the fact that these applications met all the requirements. The authors add that this assistance is capped at 50 per cent of the monthly rent for persons under 35 years of age or over 65 years of age. They also state that the municipal assistance is a one-off payment that varies in proportion to the rent and is approximately sufficient to cover the first three monthly payments. According to the authors, the root of the problem is that there is insufficient public housing in Asturias to meet the growing demand for affordable housing, to the extent that the system is overwhelmed with applications. They add that applicants can remain on waiting lists for more than a year, which is incompatible with the severe risk of housing exclusion that they face.

6.4 With regard to their rejection of the offer to stay at the Cano Mata Hostel, the authors refer to the additional information submitted on 18 January 2019 and add that, in the experience of Plataforma de Afectados por la Hipoteca of Oviedo, the management of the hostel itself recommends that the families housed there have no contact with other residents.

6.5 The authors claim that the government of the Principality of Asturias is not fulfilling its obligation to take measures, “to the maximum of its available resources, with a view to achieving progressively the full realization” of the right to housing, as required by the Covenant. They add that, as the Committee has recognized, the austerity measures imposed since the real estate bubble burst in 2008 have had a negative impact on the right to adequate housing, particularly among the most disadvantaged and marginalized individuals and groups in Asturias.¹⁸ The authors mention that investments and transfers in application of the housing policy of the Principality of Asturias were reduced between 2009 and 2013. By way of example, they mention the fact that the Budget Act (No. 8/2019) of the Principality of Asturias for 2020 shows that the Principality is failing to comply with the aforementioned obligation under the Covenant, insofar as: (a) it provides for an increase in the number of government posts, resulting in the related annual expenditure increasing from €338,600 to €845,000; (b) since 2015, €156 million has been used to pay off debts incurred by two public-sector land development companies, with an additional €21 million being disbursed in 2020 that could have been used to build 2,500 new public housing units; and (c) it provides for €638,460 to be used to subsidize the purchase of housing instead of funding access to rental properties for the most vulnerable groups in society. The fact that almost 25 per cent of the Asturian population is experiencing problems related to housing exclusion shows that the government of the Principality of Asturias is not fulfilling its obligations under the Covenant.¹⁹

6.6 The authors have been criticized for being uncooperative; however, they affirm that the right to adequate housing should not be dependent on the extent to which vulnerable persons have engaged with the municipal social services. They add that the public authorities are required to protect all persons and guarantee their fundamental rights, even when these persons make occasional errors of judgment or unwise decisions. They further state that Plataforma de Afectados por la Hipoteca of Oviedo did not give Ms. Sariego Rodríguez any guarantee that she would be allocated emergency housing. Rather, it advised her with regard to her right to obtain it and of the procedure to follow in order to do so.

6.7 The authors claim that they submitted their communication on 4 January 2019, that is, on the same day on which they filed a request for the suspension of the eviction scheduled for 8 January 2019. It was therefore a measure of last resort to prevent them from being evicted from their home. They explain that, from the date on which an application for emergency housing is submitted, the City Council has a period of two months in which to send the file to the relevant department, which has an additional month in which to decide. Ms. Sariego Rodríguez filed the application on 21 November 2018, one month and 12 days before she brought her imminent eviction to the attention of the Committee.

¹⁸ E/C.12/ESP/CO/6.

¹⁹ Throughout their comments, the authors respond to the observations contained in the report issued by the Principality of Asturias on the data presented in their original communication, which concerned, inter alia, the number of homeless persons in Asturias, the number of evictions due to non-payment of mortgages and rent, the number of unsold new housing units, and the number of housing units developed by the Principality of Asturias (see footnote 9 above).

6.8 The authors argue that the fact that, as they have demonstrated, the government of the Principality of Asturias does not allocate all available resources to uphold the right to adequate housing for socially excluded persons disproves the State party's claim that it grants priority attention to those in greatest need. They add that, as fundamental rights are at stake, it is unacceptable that there should be waiting lists or different categories of vulnerable persons; the fundamental right to adequate housing must be universally guaranteed and cannot be denied just because the persons involved have made bad decisions. The authors explain that the measures mentioned by the State party, such as tax relief schemes, mortgage subsidies and the like, are irrelevant to this case, and serve only to justify using public resources to promote homeownership rather than to ensure access to adequate housing for the most disadvantaged persons.

B. Committee's consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 Article 3 (1) of the Optional Protocol precludes the Committee from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that States parties have a positive obligation under article 2 (1) of the Covenant to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means. The Committee recalls, however, that States parties may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant, as provided for in article 8 (4) of the Optional Protocol. The Committee therefore recognizes that States parties may establish administrative channels to facilitate the protection of the right to housing, including by requiring individuals to undertake certain administrative procedures to notify the authorities of their need for assistance in the protection of their right to housing. These formalities should not impose an excessive or unnecessary burden on individuals and should not have a discriminatory effect.²⁰

7.3 Further to article 3 (2) (e) of the Optional Protocol, the Committee will declare inadmissible any communication that is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by the mass media. The Committee recalls²¹ that it is the authors' duty first to substantiate their claims and to provide the relevant documentation. The Committee understands that communications may be submitted by persons who are not represented by lawyers or jurists trained in international human rights law. The Committee must therefore, in accordance with the victim-centred approach, refrain from imposing any unnecessary formalities in order to avoid creating obstacles to the submission of communications. For the Committee to consider the merits of a communication, however, the facts of the case and the claims it makes must show, at least prima facie, that the authors may be actual or potential victims of a violation of a right enshrined in the Covenant.²²

7.4 The Committee considers that any lack of due diligence in requesting assistance from the domestic administrative authorities with a view to securing access to alternative housing within a reasonable time frame would be an important factor in determining whether domestic remedies have been exhausted, as required under article 3 (1) of the Optional Protocol, and whether the claim that the State party has failed to comply with its obligations under article 11 (1) of the Covenant has been substantiated.²³

²⁰ *Taghzouti Ezqouihel v. Spain* (E/C.12/69/D/56/2018), para. 6.4.

²¹ *A.M.O. and J.M.U. v. Spain* (E/C.12/68/D/45/2018), para. 10.3; *Arellano Medina v. Ecuador* (E/C.12/63/D/7/2015), para. 8.10; and *Martínez Fernández v. Spain* (E/C.12/64/D/19/2016), paras. 6.4 and 6.5.

²² *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.15; and *S.S.R. v. Spain* (E/C.12/66/D/51/2018), para. 6.4.

²³ *Ibid.* para. 6.3.

7.5 In the present case, the Committee notes the State party's allegation that the authors have not exhausted the available domestic remedies because they did not apply for public housing until the day before the date for which their eviction was initially scheduled and that this application is still being processed. The Committee notes that the authors did not respond to the State party's allegation, did not provide reasons for not having applied for public housing on an earlier date (such as when they stopped paying their rent), and did not provide information on the status of their application when they submitted their comments on the State party's observations.

7.6 The Committee notes the authors' assertion that they were evicted without the State party providing them with any alternative housing, that they tried unsuccessfully to rent private-sector housing, and that the Cano Mata Hostel, "whose characteristics, habitability and facilities are not known", does not meet the minimum requirements of stability and security of tenure. The Committee notes the State party's claim that steps were taken to provide the authors with decent housing as soon as Ms. Sariego Rodríguez informed social services of the landlady's claim and that these efforts did not succeed because of the authors' actions. It also notes that the judicial authority suspended the eviction at the authors' request until the social services had been able to demonstrate that they had sufficient resources and access to alternative housing. In particular, the Committee notes that, on 15 November 2018, Ms. Sariego Rodríguez claimed to have made a verbal agreement to rent another property but that, on 29 November 2018, she stated that she had pulled out of the agreement because Plataforma de Afectados por la Hipoteca had told her that she could gain access to emergency housing. The Committee also notes the State party's assertion that, on 13 December 2018, Ms. Sariego Rodríguez rejected the offer of professional help to find a rental property and that, on 4 January 2019, she turned down, for the last time, the offer of temporary housing at the Cano Mata Hostel because she had a pet that the shelter would not accept. The Committee notes the State party's argument that the offer of accommodation at the Cano Mata Hostel was intended to be a temporary measure of last resort.

7.7 The Committee notes that there is a contradiction between the authors' claim that the State party's authorities offered only the Cano Mata Hostel as an alternative and the information contained in the social services reports, which indicates that the authors received offers of financial assistance to rent private-sector housing and that the hostel was offered only as a final, temporary alternative in the event that they were evicted. The Committee also notes that the authors first mentioned the lack of security of tenure of the hostel (which, according to the social services reports, was offered only as a temporary measure of last resort) and then stated that it was unsuitable because of the type of people housed in one section of it, while at the same time acknowledging that they knew nothing about its characteristics, habitability and facilities. The Committee notes that the authors do not refute the State party's observations as to the reason why they rejected the shelter, as set out in the social services report. The Committee also notes a contradiction between the authors' claim to be unable to rent private-sector housing and the fact that they allegedly pulled out of a verbal agreement to rent a private property because they thought that they could gain access to public housing, as stated in the social services report of 23 November 2018. The Committee notes that, in the authors' comments, they did not refute the information contained in the social services report and limited themselves to explaining that Plataforma de Afectados por la Hipoteca did not give them any assurances or guarantees regarding the allocation of emergency housing but merely advised them of their right to obtain it and the relevant procedure to follow. The Committee notes that the authors have not disputed the claim that they subsequently refused the offer of professional help to rent a private-sector property. Furthermore, they provided no information on their housing situation or the status of their application for public housing when they submitted their comments on the State party's observations. In the light of the above, and the authors' aforementioned lack of due diligence in relation to their late application for public housing (paras. 7.2–7.4 above), the Committee considers that the authors have not sufficiently substantiated a potential violation of their right to adequate housing or the State party's alleged failure to fulfil its obligations under article 11 (1) of the Covenant.

7.8 Consequently, given that it does not have sufficient evidence before it to find that, in the present case, the authors have acted with due diligence in exhausting domestic remedies, or that their right to adequate housing has been violated, or that a potential violation might

be attributed to the State party, the Committee finds the communication inadmissible under article 3 (1) and (2) (e) of the Optional Protocol in relation to the claim of a violation of article 11 (1) of the Covenant.

C. Interim measures and eviction of the authors

8.1 The Committee recalls that the adoption of interim measures pursuant to article 5 of the Optional Protocol is vital to the Committee's performance of the role entrusted to it under the Optional Protocol.²⁴ The reason for the existence of interim measures is, *inter alia*, to preserve the integrity of the process, thereby ensuring the effectiveness of the mechanism for protecting Covenant rights when there is a risk of irreparable damage.²⁵ In accepting the obligations imposed by the Optional Protocol, States parties undertake to cooperate in good faith with the Committee. Thus, any State party that does not adopt interim measures requested by the Committee fails to fulfil its obligation to respect in good faith the procedure for individual communications established in article 2 of the Optional Protocol, as well as article 5, which gives the Committee the power to request such measures.²⁶

8.2 The Committee thus has the competence to determine whether the State party has failed to comply with its obligations under articles 2 and 5 of the Optional Protocol, making it unlikely that the future decision or Views would provide effective protection, thus depriving the individual communications procedure of its *raison d'être*.²⁷ The Committee's competence to examine an independent violation of the Optional Protocol persists even if the Committee declares the communication inadmissible, as the Optional Protocol imposes an independent obligation on States to honour requests for interim measures. That is why the Committee has found violations of the Optional Protocol even in cases where the communication was declared inadmissible in relation to the rights enshrined in the Covenant.²⁸ The Committee may therefore find that the initial communication is sufficiently substantiated to be registered and that it indicates that the situation warrants a request for interim measures in order to avoid irreparable damage.²⁹ There is nothing, however, to prevent the Committee, after further consideration on the basis of new information provided by the State party, from concluding that the interim measures were unjustified or are no longer necessary.³⁰ Similarly, the information provided by the parties on the admissibility and merits of the communication may even lead the Committee to conclude that the communication, which initially appeared admissible *prima facie*, is inadmissible for want of sufficient substantiation, as was the case here.³¹ It is therefore not contradictory for the Committee to request interim measures and then declare the communication inadmissible.³² For this very reason, in accordance with rule 7 of the provisional rules of procedure under the Optional Protocol, a State may oppose a request for interim measures and ask that it be lifted, in which case it will provide the Committee with arguments as to why the interim

²⁴ *Ibid.*, para. 7.6; Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 6.1.

²⁵ *SSR v. Spain* (E/C.12/66/D/51/2018), para. 7.6; see also, *mutatis mutandis*, European Court of Human Rights (Grand Chamber), *Mamatkulov and Askarov v. Turkey* (applications nos. 46827/99 and 46951/99), judgment of 4 February 2005, para. 128 ("Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34."); and Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia*, para. 6.1.

²⁶ *SSR v. Spain*, para. 7.7; see also Human Rights Committee general comment No. 33 (2008) on obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 19.

²⁷ *SSR v. Spain*, para. 7.8; Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia*, para. 6.3.

²⁸ *SSR v. Spain*, para. 7.9.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

measures are unjustified and why there is no risk of irreparable damage.³³ In addition, the State party may submit arguments for finding a communication inadmissible.³⁴ The Committee therefore recommends that, to ensure the integrity of the procedure, the State party develop a protocol for honouring the Committee's requests for interim measures and that it inform all relevant authorities of the need to honour such requests.³⁵

8.3 In the present case, having examined the file, the Committee has not found any elements that would allow it to conclude that the State party has violated its international obligation to honour in good faith the request for interim measures issued under articles 2 and 5 of the Optional Protocol, which were aimed at avoiding possible irreparable damage to the authors.

D. Conclusion

9. The Committee therefore decides that:

(a) The communication is inadmissible under article 3 (1) and (2) (e) of the Optional Protocol;

(b) The present decision shall be transmitted to the authors of the communication and to the State party.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid., para. 10.