



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 102/2019*

<i>Communication submitted by:</i>	Gladis Patricia Loor Chila (represented by Carmen Oriol Fita)
<i>Alleged victims:</i>	The author and her grandchildren
<i>State party:</i>	Spain
<i>Date of communication:</i>	21 September 2018 (initial submission)
<i>Date of adoption of decision:</i>	12 October 2021
<i>Subject matter:</i>	Eviction of the author from her home
<i>Procedural issues:</i>	Insufficient substantiation of claims; failure to exhaust domestic remedies
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	3 (1) and (2) (e)

1.1 The author of the communication is Gladis Patricia Loor Chila, a national of Spain and Ecuador born on 10 October 1966. The author is acting on her own behalf and that of her minor grandchildren, who are her dependants and were born on 11 September 2003 and 2 April 2009. She claims that the State party has violated her rights and those of her grandchildren under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by counsel.

1.2 On 5 February 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 eviction of the author while the communication was being considered or, alternatively, to provide her with adequate housing, in genuine consultation with her, in order to avoid causing irreparable damage to her or her grandchildren.

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

* 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

Before registration of the communication

2.1 On an unspecified date between August 2017 and February 2018, the author began to occupy a property without legal title.²

2.2 On 6 February 2018, the fund that owned the dwelling applied to initiate eviction proceedings against the author on grounds of illegal occupancy³ in order to recover possession of the property. On 27 June 2018, Court of First Instance No. 8 of Rubí (Barcelona) ruled in favour of the application in its entirety, considering that the claimant's title to the property had been proven and that the respondent had failed to provide any evidence of a title or of the right to occupy the property. Consequently, the Court ordered the property to be vacated and, in the event that the author did not leave the dwelling and the Court decision became final, set the eviction for 25 September 2018. The author appealed the decision.⁴

2.3 On 25 October 2018, Court of First Instance No. 8 of Rubí approved the fund's application for provisional enforcement of the eviction decision while the appeal was being processed, ordering the author to vacate the building and setting 9 January 2019 as the eviction date should she fail to comply. The author challenged the provisional enforcement order. On 17 December 2018, Court of First Instance No. 8 of Rubí upheld the provisional enforcement order, noting that the decision was clear, that the appeal was unlikely to be successful and that the author was receiving assistance from the social services and could return to the dwelling if her appeal was successful.

2.4 On 3 January 2019, Court of First Instance No. 8 of Rubí requested the social services to conduct a social risk assessment and recommend mitigation measures. On 7 January 2019, the social services and the author requested the suspension of the eviction because there were minors in the home and she had no alternative accommodation. On the same date, Court of First Instance No. 8 of Rubí denied the request, as the eviction had already been postponed for longer than provided for in article 704 of the Civil Procedure Act (two 1-month periods).

2.5 However, the eviction was not carried out on 9 January 2019, because the author had not vacated the dwelling and the officers of the court did not have the assistance of the security forces.⁵ On 10 January 2019, the eviction was rescheduled for 6 February 2019.

After registration of the communication

2.6 On 5 February 2019, the social services informed Court of First Instance No. 8 of Rubí that it saw no need to be present at the eviction, as the author was temporarily living in another home thanks to the help of friends. At 1 p.m. on 6 February 2019, the officers of the court who went to the dwelling found it empty, apart from some furniture and personal belongings, with no sign of any occupants.

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

² The author does not indicate an exact date. According to a social services report of 23 September 2019, in July and August 2018, the author lived in a dwelling she owned that was the object of foreclosure proceedings and, in April 2018, the author informed the social services that she was occupying the dwelling discussed in this communication.

³ Eviction on grounds of illegal occupancy is a civil procedure initiated by property owners in order to have individuals occupying their property without their consent vacate the premises. Occupancy without consent can arise either when an owner withdraws prior consent or when no such consent was ever given.

⁴ The author does not provide any information on the outcome of her appeal.

⁵ The author provides no further information.

Complaint

3.1 The author submits that her eviction was a disproportionate measure and violates article 25 (1) of the Universal Declaration of Human Rights, article 9 of the Convention on the Rights of the Child, article 8 of the European Convention on Human Rights, article 11 (1) of the Covenant and article 47 of the Constitution of Spain.

3.2 The author is of the view that, since one government agency considers the family to be at risk of homelessness, facing the imminent loss of their dwelling and without the necessary income to secure accommodation in the open housing market, the eviction order issued by another agency is contradictory. The author submits that she has no other income than the State allowance for dependent minors.⁶ She emphasizes that her situation differs from that of the owner, which holds a vast number of assets and is therefore not using the dwelling, and that, since the fund is seeking to rent out the dwelling anyway, it could simply rent it to her.

3.3 The author also emphasizes that the provisional enforcement order is not final and, in this case, the owner has no urgent need to recover the property, which is not consumable and will not lose value while the owner is waiting for the order to become final.

3.4 The author is of the opinion that her eviction would cause serious and irreparable damage and would violate her rights and those of her grandchildren, especially if she is separated from them because she no longer has a place to live.

State party's observations on admissibility and the merits

4.1 In its observations of 3 October 2019, the State party requests the Committee to find the communication inadmissible or, alternatively, to find that none of the facts of the case constitutes a violation of the Covenant.

4.2 The State party indicates that the judicial case file contains a document dated 6 February 2019, according to which the social services informed the court that the author and her grandchildren had moved to other accommodation.

4.3 The State party stresses that the author was receiving an unemployment benefit of €430.27 at the time of the eviction and that, according to a social services report of 27 September 2019, she held a temporary, full-time employment contract in September 2018. Moreover, according to the same report, the author was not present at the eviction set for 6 February 2019 because it conflicted with her work schedule. Yet, in her submission to the Committee dated 1 February 2019, the author contended that she had no other income than the unemployment benefit. For this reason, the State party is of the view that the author should show proof of her actual economic situation.

4.4 The State party also stresses that despite being aware of the eviction date since 25 October 2018, the author waited until 1 February 2019 to submit her individual communication to the Committee. This meant that the State party received the request for interim measures less than 24 hours before the eviction date, making it very difficult for it to take action in such a short period of time.

4.5 The State party is of the view that the author has not exhausted domestic remedies insofar as, despite occupying a property without legal title since at least February 2018, she did not seek help from the social services until April 2018 or apply for public housing until June 2018, in other words after she had begun to occupy a property without legal title and after judicial proceedings had been initiated. Therefore, at the time of submission, she had not exhausted domestic remedies.

4.6 Concerning the rights of the author and her grandchildren under article 11 (1) of the Covenant, the State party underscores that the author and her grandchildren have access to free, good quality public health care and that the grandchildren enjoy free public education that includes an entitlement to subsidized meals. Furthermore, the author has had access to the justice system and legal assistance at no cost and is entitled to free or subsidized basic

⁶ The author provides a social services report of 22 June 2018, according to which she receives €430 a month in unemployment benefits.

services through the social allowances for electricity, heating and water. In addition, the author had paid employment, the details of which are still unknown. Nevertheless, the social services of Rubí City Council provided the family with a basket of basic foodstuffs for six months. In addition, in September 2019, the author's grandchildren received a school meal grant and the author was offered a 50 per cent subsidy on school meals while the grant was being processed. The State party considers that all this indicates that the family's needs are, to the extent of available resources, being met with public resources, and that only the need for housing remains to be clarified. In that connection, the State party emphasizes that the facts show that the author did not request public housing until after she had begun occupying somebody else's property; that her application for public housing was approved in January 2019, after which she was placed on a waiting list; and that she was approved to take part in the 60/40 programme with the aim of finding rental accommodation suited to her needs on the municipality's private housing market.

4.7 The State party believes that article 11 of the Covenant does not apply to persons who are illegally occupying somebody else's property. The right to own property, individually or with others, is enshrined in article 17 of the Universal Declaration of Human Rights and article 33 of the Spanish Constitution. The protection of property rights is internationally recognized as a fundamental human right that allows owners to meet their basic needs, and for that reason it is necessary to ensure that there is protection from arbitrary seizure of property. Accordingly, article 11 (1) of the Covenant cannot be used to excuse instances where the property of others is unlawfully appropriated, as in the present case. Moreover, in its general comment No. 7 (1997), the Committee recognizes that evictions may be appropriate in certain cases, including the occupation of somebody else's property, although they must be carried out in accordance with the law, with adequate legal remedies available to those affected, in a timely manner and in the presence of competent officials.

4.8 The State party argues that the right to housing is not an absolute right to a particular dwelling owned by another person, nor is there 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,⁷ 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 Spanish Constitution and various of the statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,⁸ the right to housing is "a constitutional mandate or guiding principle" that calls primarily for the adoption of social measures but does not in itself constitute a separate area of competence of the State. It is therefore the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land to prevent speculation in the interest of the common good. This right, which is to be realized progressively, is thus fully protected by the State party in line with its international obligations. The State party refers to the arguments set forth in similar communications concerning the efforts undertaken in the sphere of housing.

4.9 In keeping with this analysis of the nature of the State party's obligations under article 11 (1) of the Covenant, the State party considers that its compliance should be assessed on the basis of the following three parameters: (a) the minimum income level required for a person to access housing on the open market; (b) the number of persons below that threshold; and (c) the public funds in the budget available to cover the shortfall. Consequently, the assessment should be based on whether the State party is allocating all available resources to

⁷ Court of Justice of the European Union, *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria SA*, C-539/14, order of 16 July 2015, para. 49.

⁸ Constitutional Court Judgments No. 152/1988, No. 7/2010 and No. 33/2019.

cover the shortfall and, if those resources are insufficient, whether the limited resources are allocated according to objective criteria, without discrimination and starting with the most needy. The Committee employs this exact reasoning in its general comment No. 7 (1997), in which it considers that in cases where lawful eviction renders a person homeless, the State has an obligation to take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing is available.

4.10 In keeping with this reasoning on the scope of the right to adequate housing, the State party considers that in order to conclude that the Covenant has been violated in this case, the author would have to prove (a) that she is in need; (b) that the authorities have not devoted the maximum of available resources; (c) that, if the maximum of available resources was allocated but was insufficient to cover the shortfall, the resources were not used in a rational and objective manner; and (d) that the situation at the source of her complaint was not of her deliberate or conscious doing, which would have disqualified her from receiving public assistance.

4.11 The State party describes 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 leaving 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 avoid 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 suspended for one month if the owner is a natural person or three months if the owner is a legal person. In Catalonia, this assistance is supplemented by emergency social benefits whose purpose is to address one-time, urgent and basic needs in the Autonomous Community. The State party has also taken steps to promote the maintenance of a sufficient stock of public housing by adopting urban planning legislation which provides that, where private land is to be used for urban development, some of that land must be made available for public purposes free of charge and by financing the construction of social housing on such land. Lastly, the State party has established objective criteria for assessing applicants' need for social housing and allocating housing units.

4.12 In the present case, the author began to occupy somebody else's property without first applying for public housing. According to the State party, this manner of occupation does not fall under the scope of protection of article 11 (1) of the Covenant and harmed the legal person who owned the property. The social services were present on all the scheduled eviction dates and have kept track of developments in this case and provided assistance since 2017. Her application for public housing was approved, and the author was enrolled in the 60/40 programme to help her find rental accommodation on the private housing market. Lastly, the author's situation is in large part due to her own actions, namely, occupation of a dwelling since at least February 2018 without applying for public housing. In the light of the foregoing, the State party concludes that the authorities have not been derelict in their duties under article 11 (1) of the Covenant.

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

5.1 In her comments of 20 March 2020, the author informs the Committee that the eviction was not suspended and was in fact carried out on the scheduled date. According to the author, the eviction was not suspended because Court of First Instance No. 8 of Rubí was informed by the social services that she had moved to other accommodation on her own initiative. However, the author submits that this information is inaccurate, as she and her grandchildren had merely been taken in for one day by a neighbour, in whose home they had shared a room.

5.2 The author claims that the social services took no action to verify the family's housing situation and that she and her grandchildren lost all the belongings that they had been unable to retrieve from the property before the eviction. The author further submits that, although the Catalonia Economic and Social Emergency Assessment Board recognized that she was in an emergency situation, she was not allocated public housing. Moreover, she was never

informed that she had been approved for the 60/40 programme, as claimed by the social services, or offered access to it. After receiving the State party's observations, the author requested information about the 60/40 programme from the social services, which told her that, although the government of Catalonia had approved her for the programme, she was not eligible for it.

5.3 The author believes that her right to housing was violated when she was evicted from a dwelling for the purpose of restoring possession of it to an endowment fund, which then refused to rent it out and was keeping it empty. She also believes that the Committee's request for interim measures was disregarded and that the social services were negligent. In her view, the authorities have acted in an inconsistent manner, recognizing her need for assistance on the one hand and denying her access to that assistance on the other.

B. Committee's consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 The Committee notes the State party's claim that the author has not exhausted available domestic remedies because she did not request assistance from the social services or apply for public housing until she was already occupying a property without legal title and judicial proceedings were under way. The Committee also notes that the author does not respond to this claim or explain why she did not request assistance from the authorities in her search for housing prior to beginning to occupy the property in question.

6.3 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.⁹

6.4 Accordingly, the Committee considers that the author's lack of due diligence in requesting assistance from the domestic administrative authorities to guarantee her access to alternative housing within a reasonable period of time constitutes an important element in determining not only whether domestic remedies have been exhausted as required under article 3 (1) of the Optional Protocol but also whether the claim that the State party failed to fulfil its obligations under article 11 (1) of the Covenant has been substantiated.¹⁰

6.5 Pursuant to article 3 (2) (e) of the Optional Protocol, the Committee shall declare inadmissible any communication that is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media. The Committee notes the State party's claim that the author's need for assistance has not been substantiated inasmuch as there are discrepancies between the author's submission to the Committee and other available information on her employment status and income at the time of and after the eviction, as well as the State party's request that the author clarify this issue. The Committee also notes that the author does not respond to these claims or explain what her income and employment situations were at the time of the eviction or now. The Committee further notes that the author does not provide any detail on her housing situation since the eviction, beyond stating that she did not receive direct help from the authorities in this regard.

⁹ *Taghzouti Ezgouihel v. Spain* (E/C.12/69/D/56/2018), para. 6.4.

¹⁰ *Ibid.*, para. 6.3.

6.6 The author has also failed to provide documentation showing that, as a result of the eviction, she has been deprived of her right to adequate housing – for example, by having been made homeless or finding herself in a dwelling that does not meet the minimum requirements for housing suited to her needs and those of her grandchildren. The Committee recalls that authors have a duty first to substantiate their claims and provide the relevant documentation.¹¹ The Committee understands that communications are sometimes 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 its consideration. For the Committee to consider the merits of a communication, however, the facts of the case and the claims made 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.¹² In the present case, the Committee notes that there is a discrepancy between the information on the author’s income contained in her initial submission and the references to her income in the documentation provided by the State party. The Committee also notes that, although the author is represented by counsel, both in the domestic proceedings and before the Committee, the discrepancy as to her income has not been explained. The Committee therefore considers that the author has not satisfactorily substantiated a situation of need arising from a lack of sufficient income to access the private housing market. The author has also failed to explain where she has been living since the eviction and in what way her access to adequate housing has been impaired as a result of that accommodation. Consequently, as it does not have sufficient evidence before it to consider that, in this case, the author’s and her grandchildren’s right to adequate housing has been violated or that this right is actually under threat, the Committee finds that, in respect of the claim of a violation of article 11 of the Covenant, the communication is insufficiently substantiated for the purposes of admissibility and is inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

C. Interim measures and eviction of the author

7.1 The Committee recalls that the adoption of interim measures pursuant to article 5 of the Optional Protocol is vital to the Committee’s effective performance of the role entrusted to it under the Protocol.¹³ 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.¹⁴ By assuming the obligations under the Optional Protocol, States parties commit to cooperating with the Committee in good faith. Accordingly, a State party that fails to adopt the interim measures requested by the Committee is in breach of the obligation to follow in good faith the individual communications process established in article 2 of the Optional Protocol and of article 5, which establishes the Committee’s authority to request the adoption of interim measures.¹⁵

¹¹ *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. 6.4–6.5.

¹² *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.

¹³ *S.S.R. v. Spain*, para. 7.6; Committee against Torture, *Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 6.1.

¹⁴ *S.S.R. v. Spain*, para. 7.6. See also, mutatis mutandis, European Court of Human Rights (Grand Chamber), *Mamatkulov and Askarov v. Turkey* (applications No. 46827/99 and No. 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 of the European Convention on Human Rights”); and Committee against Torture, *Thirugnanasampanthar v. Australia*, para. 6.1.

¹⁵ *S.S.R. v. Spain*, para. 7.7. See also Human Rights Committee, general comment No. 33 (2008), para. 19.

7.2 The Committee is therefore competent to determine whether the State party failed to comply with its obligations under articles 2 and 5 of the Optional Protocol and made it unlikely that the future decision or Views would provide effective protection, thus depriving the individual communications procedure of its *raison d'être*.¹⁶ The Committee's competence to consider an independent violation of the Optional Protocol remains intact, even when the Committee finds a communication inadmissible, because the Optional Protocol imposes on States a separate obligation to respect interim measures. For that reason, the Committee has found violations of the Optional Protocol, including in cases where the communication was declared inadmissible with regard to Covenant rights.¹⁷ The Committee may therefore find that the initial communication is sufficiently substantiated to be registered and that the situation it describes warrants a request for interim measures in order to avoid irreparable damage.¹⁸ 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.¹⁹ 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.²⁰ It is therefore not contradictory for the Committee to request interim measures and then declare the communication inadmissible.²¹ 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 withdrawn, in which case it will provide the Committee with arguments as to why the interim measures are unjustified and why there is no risk of irreparable damage.²² In addition, the State party may submit arguments for finding a communication inadmissible.²³ Accordingly, the Committee 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.²⁴

7.3 In the present case, upon examination of the file, the Committee does not have sufficient evidence to conclude that the State party has failed in its international obligation to honour in good faith the request for interim measures issued under articles 2 and 5 of the Optional Protocol with the aim of preventing irreparable damage to the author.

D. Conclusion

8. Accordingly, the Committee decides that:

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

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

¹⁶ *S.S.R. v. Spain*, para 7.8; Committee against Torture, *Thirugnanasampanthar v. Australia*, para. 6.3.

¹⁷ *S.S.R. v. Spain*, para. 7.9.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*, para. 10.