



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 79/2020*, **

<i>Communication submitted by:</i>	Jacinto Ferrer Manils (represented by the Observatori d'Habitatge i Turisme del Clot-Camp del l'Arpa)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	7 February 2020 (initial submission)
<i>Date of adoption of decision:</i>	24 March 2022
<i>Substantive issue:</i>	Eviction of an older man with a disability without assessing the impact of the measure on his health and well-being

1. The author of the communication is Jacinto Ferrer Manils, a 92-year-old national of Spain who lived in a rented apartment in Barcelona for more than 80 years. He submitted the communication on his own behalf and claimed to be the victim of violations by the State party of articles 3, 11, 13, 15, 17 and 19 of the Convention, as he was going to be evicted from his apartment for an alleged breach of contract on Tuesday, 11 February 2020. The Optional Protocol to the Convention entered into force for the State party on 3 May 2008. The author was represented by counsel.

2. The author lived in an apartment with a lease dating back to 1960. In response to a late payment in January 2018, the owner of the apartment filed an action for eviction for breach of contract, alleging that months earlier she had notified him by burofax registered delivery that he had to pay his rent by the fifth day of the month. On 5 June 2018, the court of first instance ruled that the circumstances of the case did not warrant application of the rules governing breach of contract given that the author had paid what he owed prior to the admission of the lawsuit (and within 30 days) and that the author was 90 years old at the time. Although he had claimed to have difficulty paying on time, he had always paid and had never shown a willingness to default. The owner lodged an appeal, and the Provincial High Court of Barcelona overturned the ruling of the court of first instance on 17 June 2019. The Provincial High Court found that the arguments of the court of first instance were not sufficient to establish an exception and reasoned that, by sending notification via registered courier, the owner had expressly requested that the author pay on time. This judgment was not appealed by the author's court-appointed lawyer, who allegedly did not explain to him

* Adopted by the Committee at its twenty-sixth session (7–25 March 2022).

** The following members of the Committee participated in the consideration of the communication: Rosa Idalia Aldana Salguero, Danlami Umaru Basharu, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Abdelmajid Makni, Sir Robert Martin, Floyd Morris, Jonas Ruskus, Markus Schefer and Saowalak Thongkuay.



that this was an option. On 20 January 2020, an attempt was made to evict the author but was aborted due to neighbourhood resistance. The court officers present at the scene set a new eviction date of Tuesday, 11 February 2020.

3. The author alleged that both the first attempt and the planned eviction violated his right to respect for his dignity, protected under article 3 (a) of the Convention, since the Provincial High Court had not taken into account his severe dependency and the degree of his physical disability (75 per cent) in its ruling. He also alleged that, in violation of article 11 of the Convention, his physical integrity and emotional stability had been put at clear risk during the attempted eviction, which had involved the disproportionate use of force by the security forces. He also alleged a violation of article 13 of the Convention, as his right to equal access to justice had been violated due to the inaction of his court-appointed lawyer, who could have appealed the ruling of the Provincial High Court. The author claimed that the failure to take into account his severe dependency and disability in the judicial analysis of his situation had amounted to cruel, inhuman and degrading treatment, in violation of article 15 of the Convention. He also claimed a violation of article 17 of the Convention, as the situation of forced eviction with the use of disproportionate violence violated his right to personal integrity. Lastly, the author alleged a violation of his right to live independently in his home as he wished, in accordance with article 19 (a) of the Convention. The author had repeatedly expressed his desire to live out the rest of his life at home. If the eviction had been carried out, his only housing alternative would have been to enter a nursing home against his will.

4. On 7 February 2020, the Special Rapporteur on communications under the Optional Protocol, acting on behalf of the Committee, decided to register the communication and requested the State party to take interim measures by not carrying out the author's eviction pending consideration of the case by the Committee.

5. On 8 June 2020, the State party requested the Committee to declare the communication inadmissible for non-exhaustion of domestic remedies given that the author had not raised the violations alleged in the communication before the domestic courts and that the eviction had been suspended and a new date had not been set.

6. On 2 July 2020, the author submitted his comments on the State party's observations on admissibility.

7. On 21 July 2021, the State party informed the Committee of the author's death on 2 November 2020 and the discontinuation of the judicial proceedings before the local courts. In addition, it requested the Committee to discontinue its consideration of the communication since there were no other interested parties.

8. On 3 November 2021, the deceased author's daughter, Ms. F. R., and the Observatori d'Habitatge i Turisme del Clot-Camp del l'Arpa requested that the Committee continue its consideration of the case. They noted that the State party had not provided a satisfactory response to the human rights violations alleged by the late author of the communication.

9. At a meeting on 24 March 2022, the Committee, having considered the State party's request for discontinuation, noted that the author's death had rendered the present communication devoid of purpose and decided to discontinue the consideration of the communication, under rule 74 of its rules of procedure.
