



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 134/2019*, **

<i>Communication submitted by:</i>	Yaureli Carolina Infante Díaz
<i>Alleged victims:</i>	The author and her youngest son, D.A.D.I.
<i>State party:</i>	Spain
<i>Date of communication:</i>	5 May 2019 (initial submission)
<i>Views adopted:</i>	27 February 2023
<i>Subject matter:</i>	Eviction due to occupation without legal title
<i>Procedural issue:</i>	Failure to sufficiently substantiate allegations
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)

1.1 The author of the communication is Yaureli Carolina Infante Díaz, a national of the Bolivarian Republic of Venezuela born on 5 February 1990. She is acting on behalf of herself and her youngest son, D.A.D.I., born on 6 July 2008. The author claims that the State party has violated their rights under article 11 (1) of the Covenant because they are subject to an eviction order in respect of the property they live in and have no alternative housing. The Optional Protocol entered into force for the State party on 5 May 2013. The author is not represented by counsel.

1.2 On 7 May 2019, the Committee, acting through its Working Group on Communications, registered the communication. Noting the author's claim that being evicted would cause irreparable harm to her and her son because they have no alternative housing, it requested the State party to take interim measures, consisting either of the suspension of the eviction while the communication is considered or of the provision of adequate alternative housing, in genuine consultation with the author.

1.3 On 15 June 2020, acting through its Working Group on Communications, the Committee decided to reject the State party's requests to lift the interim measures and to discontinue consideration of the communication.

* Adopted by the Committee at its seventy-third session (13 February–3 March 2023).

** The following members of the Committee participated in the examination of the communication: Mohamed Ezzeldin Abdel-Moneim, Nadir Adilov, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Peters Sunday Omologbe Emuze, Santiago Manuel Fiorio Vaesken, Ludovic Hennebel, Joo-Young Lee, Karla Vanessa Lemus de Vásquez, Seree Nonthasoot, Lydia Carmelita Ravenberg, Julieta Rossi, Preeti Saran, Shen Yongxiang and Michael Windfuhr. Pursuant to rule 23 of the rules of procedure under the Optional Protocol, Mikel Mancisidor de la Fuente did not participate in the examination of the communication.



1.4 In the present Views, the Committee first summarizes the information and arguments submitted by the parties; it then considers the admissibility and merits of the communication and, lastly, draws its conclusions.

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

Facts as submitted by the author

2.1 In November 2015, when the author was homeless, she entered into a verbal agreement to rent a room in a shared property in Santa Coloma de Gramenet, Barcelona, for €200 per month.

2.2 In December 2015, the person who had rented them the room, and who was occupying another room in the same property, told the author that he was moving out and that if she wished to remain in the property, she would have to pay him the sum of €800. The author decided to pay and stay in the property. She became aware at that point that she was occupying the property unlawfully.

2.3 In June 2016, the author received an eviction order in respect of “unknown occupants”. She went to court to identify herself as the occupant of the property, and the court suspended the eviction order.

2.4 In June 2017, the author received a notice from the court informing her that the eviction order would be enforced on 5 October 2017. The eviction request was filed before Court of First Instance No. 1 in Santa Coloma de Gramenet by the financial institution that owned the property at that time.¹

2.5 The first enforcement of the eviction order against the author, scheduled for 5 October 2017, was suspended.

2.6 In 2018, the author approached the Social Services Department of Santa Coloma de Gramenet Municipal Council to report that she was in a vulnerable socioeconomic situation and was at risk of being made homeless.

2.7 On 4 October 2018, a second eviction date was set for 4 December 2018. The author requested a court-appointed lawyer, who filed an appeal to postpone the eviction until June 2019, following the end of the school year.

2.8 The appeal was rejected, and the eviction planned for 4 December 2018 was rescheduled for 13 December 2018.

2.9 On 5 December 2018, the Social Services Department issued a report highlighting the author’s precarious economic, social and housing situation. On six occasions between February and April 2019, the Social Services Department delivered food to the author.

2.10 The third eviction attempt, planned for 13 December 2018, was also rescheduled for 14 March 2019. This fourth eviction attempt was then postponed until 8 May 2019.

Complaint

3.1 The author claims that she has exhausted domestic remedies by filing a judicial appeal requesting the suspension of the second eviction (see para. 2.7) and by approaching the Social Services Department. The author specifies that she did not file an appeal against the last eviction, which was scheduled for 8 May 2019, before approaching the Committee because it would have been rejected just as her previous appeal had been.

3.2 The author claims that, in the absence of alternative housing, her eviction would violate her and her son’s rights under article 11 of the Covenant.

3.3 The author states that she cannot make an application for public housing to the housing agency of the autonomous regional government of Catalonia because she is present in the

¹ Procedure No. 486/2016, entitled “Eviction of unauthorized occupant”.

State party without the correct permit, and that she cannot find housing on the private market as she has insufficient income.

State party's observations on admissibility and the merits

4.1 On 8 November 2019, the State party requested that the interim measures be lifted and that the Committee discontinue its consideration of the communication.

4.2 The State party explains that the building where the author lives is subject to a notice of cessation of use as a dwelling because the municipal technical service has determined that it does not meet the minimum habitation, safety and health conditions.

4.3 Consequently, on 12 January 2017, Court of First Instance No. 1 in Santa Coloma de Gramenet issued a judgment accepting the request filed by the entity that owned the building and ordering the occupants' eviction from the property.

4.4 On 15 June 2017, a writ of execution was issued in the context of judicial enforcement proceedings.

4.5 On 21 June 2017, the author and her son were given a month to vacate the property voluntarily and were told that if they failed to do so, they would be evicted on 5 October 2017.

4.6 The State party indicates that, following the suspension of the first eviction, four more eviction dates were set prior to the adoption of the interim measures. In response to the Committee's request for interim measures, the eviction planned for May 2019 was rescheduled for the end of the 2018/19 school year.

4.7 The State party reports that the fifth eviction attempt, scheduled for 2 October 2019, was also suspended at the request of the enforcing entity itself. The legal proceedings have been discontinued.

Request to lift interim measures

4.8 The State party maintains that under the Optional Protocol, interim measures are to be taken only in exceptional circumstances. It recalls that, according to the Committee's general comment No. 7 (1997), evictions are permitted in certain cases provided that they are carried out in accordance with the law and in the presence of competent officials, and that those affected have adequate legal recourse.

4.9 The State party argues that the conditions set out above are applicable in the present case and that there are other reasons for lifting the interim measures, namely that the court has halted the eviction on several occasions and that the last eviction attempt was suspended at the request of the enforcing entity, meaning that the author and her son no longer face imminent eviction.

4.10 On the merits of the communication, the State party argues that the needs of the author and her son are met by public resources. It explains that they receive free health-care and education services (including the child's right to food), as well as justice services paid for by the State party and organized by the Bar Associations. They also receive free or subsidized basic services, including social grants for electricity and heating. In addition, in this particular case, Santa Coloma de Gramenet Municipal Council has assisted the author on several occasions, for example by delivering food to her and processing a referral to the family therapy service, a request for free school meals and an application for her son to attend a children's centre.

4.11 In addition, the State party argues that there is no violation of the Covenant since the Covenant does not include the right to illegally occupy a property owned by another person or entity, the right to property being a fundamental right. The State party specifies that article 11 of the Covenant is not an absolute right and does not impose a duty on States parties to provide housing to any person. It argues that the right to housing is not an enforceable subjective right, but rather a mandate for States parties to adopt appropriate measures to promote public policies designed to provide access to decent housing for all citizens. According to the Spanish Constitution, the right to housing is a "constitutional mandate or guideline" that must inform the actions of the public authorities, who are obliged to promote

the necessary conditions and establish the relevant rules to give effect to this right while also regulating the use of land in the interests of the population.

4.12 The State party claims that from a legal standpoint, it is complying with its international obligations in this area. Firstly, public housing is being developed, funding is being provided for the construction of such housing, and the ownership of some of the land used for the construction is being transferred without charge. In addition, the State party points out that measures have been taken to facilitate access to the private residential market both through home ownership, via income tax relief, mortgage subsidies and assistance for young people, and through rental opportunities, via assistance with access to the private rental market. The State party notes that measures have also been taken to try to prevent people in the private residential property market from losing their homes, including by adopting legislation imposing a moratorium on evictions for failure to meet mortgage payments and by instituting a code of best practice for banks with a view to avoiding defaults. In this regard, the State party points out that between 2012 and 2017, more than 24,000 evictions were suspended, 38,500 debts were restructured, 7,000 debts were settled and 9,020 housing units were allocated through the Social Housing Fund. In addition, measures have been taken to respond to urgent needs in cases involving legitimate evictions, and the courts have developed protocols for coordination with the Social Services Department before evictions take place, thereby making it possible to carry out assessments and provide emergency housing.² The Social Services Department is therefore responsible for assessing and tracking the needs of families and uses a standard scale as the basis for ensuring that access to public housing stock is governed by objective criteria for assessing the needs of applicants.

4.13 In summary, the State party asserts that since needs may sometimes exceed public resources, the right to housing does not guarantee occupancy of a particular property, but rather entails an adequate assessment of needs and a response to those needs as soon as the relevant public resources become available.

Analysis of the present case

4.14 The State party is of the view that in order to find a violation of the Covenant in the present case, the author would have had to show: (a) that she was in need; (b) that the authorities have not allocated the maximum of available resources; and (c) that, if the maximum of available resources has been allocated to meet her needs but her needs have not fully been met, the resources have not been allocated on the basis of rational and objective criteria according to the degree of need.

4.15 Lastly, the State party argues that, in the present case, there is no violation of article 11 of the Covenant in respect of the author and her son because the judicial authorities have suspended the evictions; the legal proceedings have provisionally been discontinued and the eviction has therefore not taken place; and complaints must refer to actual rather than hypothetical or potential violations.

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

5.1 On 3 February 2020, the author recalled that the property is owned by a bank that received €953 million in bailouts from the State party after the financial crisis. The author considers that a bank's right to property, which the State party contrasted with the right to decent housing, is not equivalent to an individual's right to property.

5.2 The author also alleges that, in contravention of article 47 of the Spanish Constitution, the State party has not put in place the necessary conditions or enacted the relevant legislation to give effect to the right to decent housing. The public housing stock in Catalonia does not meet the housing needs of the population and, at the time the author submitted her comments, it constituted only 2 per cent of homes, whereas in the Netherlands it constitutes 30 per cent. The author also states that according to Decree-Law No. 17/2019 of 23 December on urgent measures to improve access to housing, the percentage of public housing in Catalonia is

² The measures were enacted into law pursuant to Royal Decree-Law No. 7/2019 of 1 March 2019 on urgent measures related to housing and rent.

expected to increase to only 5 per cent within the 15-year period following the enactment of the Decree-Law in February 2020.

B. Committee's consideration of admissibility

6.1 Prior to considering any claim contained in a communication, the Committee must decide, in accordance with rule 10 (2) of its rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 The Committee notes that the State party did not present any arguments relating to admissibility and, in particular, did not claim that the author had failed to exhaust domestic remedies. The Committee recalls that States parties may implicitly or explicitly waive the requirement of exhaustion of domestic remedies.³ The Committee therefore considers that it is not precluded from declaring the communication admissible under article 3 (1) of the Optional Protocol, and proceeds to consider it on the merits.

C. Committee's consideration of the merits

Facts and legal issues

7.1 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.

7.2 The Committee notes that, according to the author, eviction from the property she occupies with her youngest son would amount to a violation of her right to adequate housing under article 11 (1) of the Covenant.

7.3 The Committee also notes that, according to the State party, each planned eviction has been postponed, including the eviction scheduled for May 2019, which was postponed until October 2019 in line with the interim measures requested by the Committee and to take account of the end of the school year, and that the eviction was ultimately halted at the request of the enforcing entity itself. In addition, the Committee notes that the State party refers to the Committee's general comment No. 7 (1997), which states that in some cases, such as when a property has been occupied by force, evictions are justifiable, although they should be carried out in accordance with the law, with adequate legal remedies for those affected, and in the presence of the relevant government officials. Furthermore, the State party claims that, in the present case, article 11 of the Covenant has not been violated in respect of the author because: (a) the author receives free education, legal and health services, including social grants for electricity and heating, and other forms of assistance including food, family therapy services and other emotional support, free school meals and a children's centre place for her son (see para. 4.10); (b) the unlawful occupation of a property owned by another person or entity is not protected by the Covenant, and the right to housing is not an enforceable subjective right (see para. 4.11); and (c) administrative procedures are in place to assess needs and ensure access to public housing in order of priority (see para. 4.12). In short, the State party is of the view that in order to find a violation of the Covenant in the present case, the author would have had to show: (a) that she was in need; (b) that the authorities did not allocate the maximum of available resources; and (c) that, if the maximum of available resources have been allocated to meet her needs but her needs have not been fully met, the resources have not been allocated on the basis of rational and objective criteria.

³ *Ziablitsev v. France* (E/C.12/71/D/176/2020), para. 6.7. See also European Court of Human Rights, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971; Inter-American Court of Human Rights, *Gallardo et al. v. Costa Rica*, judgment of 13 November 1981, para. 26; and *Velásquez Rodríguez v. Honduras*, judgment of 26 June 1987, para. 88.

Status of the right to decent housing for undocumented migrants⁴

7.4 The Committee notes that in the present communication, the author claims that as an undocumented migrant, she is unable to benefit from the public policies the State party describes, which are aimed at ensuring the full realization of the right to housing. The Committee therefore considers that the issue raised by the present communication is not so much the analysis of these policies, but whether or not the order to evict the author and her son without alternative housing, despite the fact that, according to the author, they were unable to benefit from those policies, constituted a violation of the right to adequate housing recognized in article 11 (1) of the Covenant.

7.5 The Committee notes that the State party does not respond to the author's assertion that because she is an undocumented migrant in the State party, she cannot apply for public housing or obtain employment, leaving her with no alternative but to unlawfully occupy the property in which she lives.

7.6 In that connection, the Committee recalls that, pursuant to article 2 (2) of the Covenant, States parties "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Committee further recalls its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, in which it emphasized that non-discrimination is an immediate and cross-cutting obligation in the Covenant and that Covenant rights, including the right to adequate housing, apply to everyone, including non-nationals, regardless of legal status and documentation.⁵ As stated by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, this implies that documented and undocumented migrants should enjoy the same protection.⁶ Observing that "[r]egrettably, many States have explicitly indicated that they do not wish to provide the same degree of protection to migrants as to their own citizens and even less to undocumented migrants", the Special Rapporteur noted that "[t]he realization of the right of migrants to adequate housing is often limited owing to a number of factors, such as [...] inadequate housing policies or inadequate coverage of social housing schemes".⁷ In particular, according to the Special Rapporteur, policies restricting the renting of social housing to non-citizens and their access to housing assistance not only prevent migrants from finding adequate housing, but also "challenge the role of the State as facilitator of access to essential services and housing".⁸ The Special Rapporteur concludes that "[p]rovision of housing should not be denied to undocumented migrants; even they must be afforded a minimum level of housing assistance that ensures conditions consistent with human dignity".⁹ In the light of the foregoing, and in the absence of any observations by the State party in this respect, the Committee considers that being unlawfully present in the territory of the State party should not, in itself, be a criterion for excluding the author and her son from public housing services.

Protection against forced eviction

7.7 The Committee reiterates that forced evictions, including of undocumented migrants, are *prima facie* incompatible with the Covenant.¹⁰ They can only be justified in the most exceptional circumstances.¹¹ The relevant authorities must ensure that such evictions are carried out in accordance with legislation that is compatible with the Covenant and in

⁴ The Committee recalls that, in 2010, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living stated that migrants who lack legal status in the host country are considered undocumented (A/65/261, para. 48).

⁵ General comment No. 20 (2009), paras. 7 and 30; and general comment No. 4 (1991), para. 6.

⁶ A/65/261, para. 17.

⁷ *Ibid.*, paras. 11 and 10, respectively.

⁸ *Ibid.*, para. 69.

⁹ *Ibid.*, para. 93. See also Inter-American Court of Human Rights, advisory opinion No. 18/03 of 17 September 2003, *Legal Status and Rights of Undocumented Migrants*, Series A No. 18, paras. 101 and 109 (see also the concurring opinion of Judge Cançado Trindade).

¹⁰ *Hernández Cortés and Rodríguez Bermúdez v. Spain* (E/C.12/72/D/26/2018), paras. 8.1–10.5.

¹¹ A/65/261, para. 18; and general comment No. 7 (1997), para. 1.

accordance with the general principles of reasonableness and proportionality between the legitimate objective of the eviction and its consequences for the evicted persons.¹²

7.8 Thus, for an eviction to be appropriate, limitations on the right to housing must be determined by law, promote public welfare in a democratic society, be suited to the legitimate purpose cited and be necessary, and the benefits to public welfare obtained through the imposition of such limitations must outweigh any impact on the enjoyment of the right being limited. The availability of suitable alternative housing and the personal circumstances of the occupants and their dependents are also crucial factors that must be considered. Moreover, a distinction inevitably needs to be made between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions. The principles of reasonableness and proportionality might make it necessary to suspend the eviction order so as to avoid subjecting the evicted persons to situations of destitution or violations of other Covenant rights.¹³

Duty of States to provide alternative housing to persons in need

7.9 In particular, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected lack resources, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing is available, irrespective of whether the eviction is initiated by its authorities or by a private entity that owns a property.¹⁴ In the event that an eviction takes place without the State party's granting or guaranteeing alternative accommodation for the affected person, 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.¹⁵

7.10 The Committee notes the State party's arguments that the needs of the author and her son were being met by public resources, in particular through health, education, food and justice services (see para. 4.10), and that article 11 of the Covenant does not impose a duty on States parties to provide housing for everyone (see para. 4.11). However, the Committee considers that, in the light of its general comment No. 4 (1991), this does not constitute an adequate response to the specific situation of the author and her son, and recalls that the human right to adequate housing is of central importance for the enjoyment of all economic, social and cultural rights and that it cannot be considered in isolation from the other rights contained in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other applicable international instruments.¹⁶

Compliance of the eviction order with treaties

7.11 The Committee notes the State party's argument that the Covenant cannot be used to legitimize the occupation of a property owned by another person or entity, which would violate the right of third parties to private property. However, the Committee recalls that the State party has a legitimate interest in ensuring protection for all rights established in its legal system so long as this does not conflict with the rights set out in the Covenant.¹⁷

7.12 In the present case, the Committee notes that although the author unlawfully occupied the property owned by the real estate arm of BBVA for more than two years, she went to the Social Services Department of the municipality where she is resident to inform them of her need for decent housing (see para. 2.6) and also made the court aware that she was in a

¹² *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 13.4.

¹³ *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 11.5.

¹⁴ *Ben Djazia and Bellili v. Spain*, para. 15.2.

¹⁵ *Ibid.*, para. 15.5. See also Statement by the Committee on an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

¹⁶ General comment No. 4 (1991), paras. 1 and 9.

¹⁷ *Hernández Cortés and Rodríguez Bermúdez v. Spain*, para. 10.2.

vulnerable situation (see para. 2.7). The author claims – and the State party does not contest – that there was no possibility of her obtaining social housing because she was undocumented. The Committee considers that, in the present case, the author’s socioeconomic vulnerability is more serious than the harm to the legal right that the State party seeks to protect.

7.13 The Committee therefore concludes that the eviction orders issued in respect of the author and her youngest son, without any housing alternatives being offered to her, constituted a violation of the right to adequate housing under article 11 (1) of the Covenant.

D. Conclusion and recommendations

8. The Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the State party violated the right of the author and her son under article 11 (1) of the Covenant. In the light of its Views on the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the author and her son

9. The State party is under an obligation to provide the author and her son with an effective remedy, in particular by: (a) granting them financial compensation for the violations; and (b) assessing their level of need in order to provide them with alternative housing.

General recommendations

10. The Committee recalls that the State party is under an obligation to prevent similar violations in the future. The State party must therefore ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party is under an obligation to ensure that the regulatory framework allows access to the social housing stock for anyone, including undocumented migrants occupying a property unlawfully, who is subject to an eviction order that could put them at risk of destitution or of a violation of their Covenant rights.

11. In accordance with article 9 (2) of the Optional Protocol and rule 21 (1) of the 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.
