



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Follow-up progress report on individual communications\*

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#### Communication No. 54/2018, *El Ayoubi et al. v. Spain*

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Date of adoption of Views:	19 February 2021
Contents of initial communication:	The authors of the communication received an eviction order for occupying a property illegally. In the authors' view, the eviction constituted a violation of article 11 (1) of the Covenant, as the order did not take into account that they were in a situation of necessity and had no access to alternative housing. <sup>1</sup>
Articles violated:	Article 11 (1) of the Covenant.
Committee's recommendations in respect of the authors:	<p>The State party is under an obligation to provide the authors and their son with an effective remedy, in particular:</p> <p class="list-item-l1">(a) In the event that the authors are not currently in adequate housing, to reassess their state of necessity and their level of priority on the waiting list, taking into account the length of time that their application for housing has been on file with the Community of Madrid, starting from the date on which they applied, with a view to providing them with public housing or taking some other measure that would enable them to live in adequate housing, bearing in mind the criteria set out in the present Views;</p> <p class="list-item-l1">(b) To provide the authors and their son with financial compensation for the violations suffered; and</p> <p class="list-item-l1">(c) To reimburse the authors for the legal costs reasonably incurred in submitting this communication, at both the domestic and international levels.</p>

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\* Adopted by the Committee at its seventy-second session (26 September–14 October 2022).

<sup>1</sup> See E/C.12/69/D/54/2018.



Committee's general recommendations:

The State party has the following obligations:

- (a) To ensure that the normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation of their Covenant rights, including persons who are occupying a property illegally, to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;
- (b) To adopt the measures necessary to put an end to the practice of automatically excluding from lists of applicants for housing all persons who find themselves occupying a property illegally, because they are in a situation of necessity, so that all such persons have equal access to the social housing stock, eliminating any unreasonable condition that might exclude persons at risk of destitution;
- (c) To take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only following genuine and effective consultation with the persons concerned and once the State party has taken all essential steps, to the maximum of its available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children or other persons in a vulnerable situation;
- (d) To develop and implement, in coordination with the autonomous communities and to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991). This plan should establish the resources, measures, time frames and evaluation criteria necessary to guarantee these individuals' right to housing in a reasonable and measurable manner.

Submission from the State party:

By note verbale dated 25 January 2022, the State party submitted its response to the Committee's recommendations.

With regard to the first recommendation in respect of the authors, the State party submits that there is no record of any application for housing made by the authors after their application of 14 February 2017, which was rejected owing to their failure to provide the required information.<sup>2</sup> The State party also reports that the Madrid Social Housing Agency has tried unsuccessfully to contact the authors to assess their circumstances and housing needs. In addition, it attaches a report from social services stating that the eviction has been postponed again following a request submitted by social services to the competent court and the owner, and that, at the time the report was submitted, the authors were still illegally occupying the same property. Social services recall that, since the family are occupying a property illegally, the authors cannot apply for social housing from the Community of Madrid, and that their

<sup>2</sup> In its Views, the Committee considered that this application did not constitute an effective remedy, since persons who are occupying housing illegally, as the authors are, cannot apply for social housing from the Community of Madrid.

application of 14 February 2017 was rejected because they were unable to produce the required documentation, as it was incompatible with the family's housing occupancy status. Social services also report that the family submitted an application for minimum income support, which was turned down because they had exceeded the annual income threshold for that benefit in 2019. The family reapplied for minimum income support in March 2021, based on their 2020 income. This decision remains pending. In the meantime, Ms. El Ayoubi has received a minimum income allowance of 210 euros per month, as well as financial support for the domiciliary care of her disabled son, and Mr. El Azouan Azouz has received a minimum income allowance of 450 euros per month. Social services consider that the authors have shown an interest in finding alternative accommodation and that the family is unable to gain access to housing on the private market. Therefore, they are of the opinion that the eviction should be suspended until such a time as the authorities are able to provide alternative accommodation.

The State party submits that it does not currently have a housing application from the authors, submitted in due form and time, and that it is therefore not possible to assess their social housing needs. The State party considers that the admission of the application for public housing submitted by Ms. El Ayoubi on 14 February 2017 and the detailed assessment of her specific circumstances and needs through a procedure that met all the applicable legal requirements constitute a measure sufficient to ensure compliance with the Committee's Views, and that it has thereby complied, to a degree that is reasonable in the circumstances, with the recommendations in respect of the authors.

Lastly, the State party respectfully disagrees with the Committee's recommendations (b) and (c) in respect of the authors.

With regard to the general recommendations, the State party reports that, in the context of the health emergency caused by the coronavirus disease (COVID-19), measures have been taken to prevent it from having an economic impact on the most vulnerable persons' right to adequate housing. First of all, a moratorium on mortgage payments has been adopted for those persons struggling to make their payments. In addition, a series of measures have been adopted under Royal Decree-Laws No. 11/2020, No. 37/2020, No. 1/2021 and No. 8/2021 to strike a balance between tenants and landlords and to address the vulnerability created by the health crisis. The State Housing Plan 2018–2021 has been amended to include a rental aid programme to soften the impact of the health crisis and an assistance programme for victims of gender-based violence, persons subject to eviction, homeless persons and other vulnerable persons. The amendment of 9 April 2020 also enables the autonomous communities to speedily offer rental aid of up to 900 euros per month for a six-month period, and this subsidy can be combined with any other form of assistance, as necessary. Funding for the plan has also been increased from 346 million euros to 446 million euros. With these measures, the autonomous communities of the State party are being given the flexibility to decide the amount to be allocated to each assistance programme.

The State party also reports that a preliminary bill on the right to adequate housing, aimed at guaranteeing the right of access to decent and adequate housing for all Spaniards on an equal basis, is in the process of being prepared. The preliminary bill provides the competent local and regional authorities with instruments to increase the supply of affordable housing and to take special measures for the persons who find it most difficult to gain access to housing. Among other things, the future law will provide for:

- (a) A ban on the resale of public social housing stock;
- (b) A minimum term of 30 years before subsidized housing can be reclassified;
- (c) The introduction of the concept of incentivized affordable housing as a means to boost supply in the private market in the short term, including by offering tax and urban planning benefits;
- (d) The right to decent and adequate housing, setting forth the obligations of the public authorities and incorporating aspects such as habitability, accessibility, energy efficiency and access to basic supply networks;
- (e) The definition of a legal status for rights and duties associated with homeownership, including its social function;
- (f) The designation of areas where the residential market is under strain, so that special measures may be applied;
- (g) The definition of large-scale property owners who have a duty to provide information and cooperation in strained market areas;
- (h) The creation of mechanisms to stabilize and lower housing rental prices, including tax measures, rent freezes, the prohibition of abusive increases, and exceptional and limited interventions during housing supply shortages;
- (i) The creation of a tax climate conducive to the lowering of rental prices;
- (j) The definition of vacant housing and the modulation of the surcharge on the real estate tax payable on these properties;
- (k) Improvements to the way in which the eviction procedure is regulated for persons in a vulnerable situation, ensuring effective and timely communication between the judicial body and social services so that the latter may assess the situation of the persons subject to eviction and provide those affected with housing solutions; the length of the postponement of the evictions of persons in a vulnerable situation is also extended;
- (l) The promotion of affordable subsidized rental housing, which must constitute at least 50 per cent of the property set aside for subsidized housing;
- (m) Increased State intervention in housing and building rehabilitation, through multi-year plans built around inter-administrative cooperation;
- (n) The creation of the Housing Advisory Council to ensure the participation of all social actors in the drafting and implementation of housing policies;

(o) Firmer guarantees when buying or renting housing, by allowing the interested party access to basic information on the conditions of the transaction and the housing;

(p) More information and transparency with respect to public housing policies, by imposing the obligation to produce an inventory of the public housing stock and periodic reports.

The State party reports that the Views have been published on the website of the Ministry of Justice.

In conclusion, the State party considers that it has complied with the Committee's recommendations and requests that the follow-up procedure in respect of these Views be concluded.

Comments by the authors:

On 30 June 2022, the authors submitted their comments on the State party's written observations.

Firstly, the authors describe the events that have taken place since the Committee adopted its Views. The authors report that the competent authorities have not taken any action to resolve their housing emergency apart from contacting the social services of El Álamo local government authority to request the family's contact details and, even after having done so, they still failed to contact them. The authors report that the competent housing authorities of the Community of Madrid have not even tried to assist them in their negotiations with the owner of the property.

The authors consider that the series of measures taken to address the crisis caused by COVID-19, as described by the State party, are only temporary and do not resolve the underlying problem. Moreover, these measures have not prevented many evictions, which, owing to the competent housing authorities' failure to act, have been dealt with by civil society and social services. For example, the eviction of the authors scheduled for 29 April 2022 was postponed for another three months thanks to the intervention of social services and civil society. The authors state that, if the authorities do not take action in relation to their case, they will not be able to gain access to housing on the private market.

As far as access to social housing is concerned, the authors submit that the State party has only described the contents of existing regulations and has not examined the problem of access. The authors further contend that it is not true that 50 per cent of applications are accepted; it is nearer to 30 per cent, a figure which can be corroborated by social services and which, according to the authors, has been published by various civil society organizations.<sup>3</sup> The number of successful applications is so low because of the regulations in force, which prevent families who are occupying a property without the owner's consent from applying for social housing.

The authors request that the State party be required to comply with all the recommendations contained in the Committee's Views, both in respect of them and the general recommendations.

Committee's decision:

The Committee notes that the authors are still living in the same dwelling and that the eviction has been postponed again thanks

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<sup>3</sup> The authors do not provide any documentation or sources.

to the intervention of social services, among others. The Committee also notes that the authors' state of necessity and their level of priority on the waiting list have not yet been reassessed, retrospectively taking into account their application for housing with the Community of Madrid, starting from the date on which they applied, as recommended by the Committee. On the contrary, the State party argues that such an assessment cannot be carried out as long as the authors continue to illegally occupy the property. The Committee recalls that it has already found, in a previous similar communication,<sup>4</sup> that this requirement can place people in a vicious circle and perpetuate the already precarious situation of persons in need, and that its aim in making such a recommendation is to ensure that the State party retroactively exempts the authors from having to comply with this requirement. Given that the authors have not yet been evicted from the dwelling because of their situation of need, but that their needs in the event of the eviction going ahead have still not been reassessed, the Committee considers that some satisfactory action has been taken to implement recommendation (a) in respect of the authors and requests the State party to remove the obstacles preventing the authors from applying for housing so that recommendation (a) may be implemented in full.

The Committee notes that the State party disagrees with the Committee's recommendations concerning compensation for violations suffered and the reimbursement of costs reasonably incurred. Therefore, the Committee considers that satisfactory action has not yet been taken in relation to recommendations (b) and (c).

With regard to its general recommendations, the Committee takes note of the advances represented by the implementation of Royal Decree-Laws No. 11/2020, No. 37/2020, No. 1/2021 and No. 8/2021, which have opened the way for dialogue and coordination between social services and legal authorities, and for fuller consideration of the socioeconomic vulnerability of persons who may be subject to eviction by judicial authorities. The Committee considers that these measures may contribute to compliance with its general recommendation (a) but notes that some of these measures are applicable only during the state of alert and that the number of evictions is still very high.<sup>5</sup>

The Committee takes note of the budgetary and administrative support provided for the State Housing Plan 2018–2021, although the assistance has not yet reached all sectors of citizens in need.<sup>6</sup> The Committee also welcomes the initiative for the adoption of a housing law containing measures aimed at responding to the housing needs of the population and, in particular, of the most disadvantaged groups and those that have the greatest difficulty in gaining access to housing for economic, social or geographical reasons. Some of these measures may also contribute to increased coordination between the different authorities with a view to providing housing options when persons without alternative housing are evicted. The Committee considers that these measures can contribute to compliance with recommendations (a), (c) and (d), and encourages the State party

<sup>4</sup> *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 12.2.

<sup>5</sup> See follow-up progress report on individual communications (E/C.12/70/3), communication No. 5/2015, *Ben Djazia et al. v. Spain*, and communication No. 37/2018, *López Albán et al. v. Spain*.

<sup>6</sup> *Ibid.*

to continue to make progress and to keep the Committee informed in this regard.

On the basis of all the information received, the Committee considers that some initial action has been taken but that further action and additional information on the measures taken are still needed. The Committee decides to continue the follow-up procedure for this communication and invites the State party to provide information on the measures taken in relation to all its recommendations. The Committee asks that the required information be sent within 180 days of the publication of the present document and that the Committee be periodically informed when progress is made in respect of its recommendations.

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