



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. 37/2018*

<i>Communication submitted by:</i>	Maribel Viviana López Albán (represented by counsel)
<i>Alleged victims:</i>	The author and her children
<i>State party:</i>	Spain
<i>Date of communication:</i>	20 June 2018 (initial submission)
<i>Date of adoption of Views:</i>	11 October 2019
<i>Subject matter:</i>	Eviction of the author from her home
<i>Procedural issue:</i>	Admissibility <i>ratione materiae</i>
<i>Substantive issue:</i>	Right to adequate housing
<i>Articles of the Covenant:</i>	11
<i>Articles of the Optional Protocol:</i>	2 and 5

1.1 The author of the communication is Maribel Viviana López Albán, a national of Spain born on 28 August 1979 in Quito, Ecuador. The author is acting on her own behalf and on behalf of five of her six children, all of whom are minors and Spanish nationals. The three oldest children were born in 2001, 2004 and 2006, respectively, and the two youngest were born in 2011. The author maintains that she and her children are victims of a violation of article 11 (1) of the Covenant by the State party. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by counsel.

1.2 On 22 June 2018, the Committee, acting through its Working Group, registered the communication and requested the State party to suspend the eviction of the author and her children while the communication was being considered or, alternatively, to provide them with adequate housing in genuine consultation with the author, in order to avoid causing them irreparable damage.

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

* Adopted by the Committee at its sixty-sixth session (30 September to 18 October 2019).



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

The facts as presented by the author¹

Before registration of the communication

2.1 The author claims that, on 1 March 2013, she entered into a rental agreement on an apartment with a monthly rent of €850 where she would live with her six children, one of whom is now of legal age. After a year of paying her rent on a monthly basis, the author discovered that the lessor neither owned the apartment nor had any legal title to it, and stopped paying the rent.

2.2 On 15 December 2014, the bank that owns the apartment filed a complaint against the author with Madrid Criminal Court No. 15 on the grounds that she was occupying the property illegally.

2.3 On 2 December 2016, Criminal Court No. 15 convicted the author of a minor offence of unlawful appropriation and ordered her to pay a fine of €44 and surrender possession of the apartment to its owner. The Court held that the rental agreement provided by the author was invalid and inauthentic since she had failed to provide any proof of the rental payments that she had allegedly made to the lessor. Having ruled that the facts as established constituted a minor offence of unlawful appropriation, the Court found that a partial exemption on grounds of necessity should be applied in the author's case and that her unlawful action could be justified to an extent given that, according to the documents provided,² she had only a very limited income, with which it was almost impossible to support her family. In its judgment, the Court held that, while it had been proven that the author was in a situation of actual and serious necessity, it had not been proven that she was entirely destitute and that it would have been impossible for her to resolve the situation by other lawful means. It therefore concluded that a partial exemption on grounds of necessity should be applied.

2.4 On 19 January 2017, the author filed an appeal against the judgment of 2 December 2016, requesting either that the court consider acquitting her of the charge on the grounds that she did have a legal title to the property, namely, the rental agreement legitimizing her occupation, or, alternatively, that her situation of necessity be considered grounds for a full rather than partial exemption. On 25 July 2017, the Provincial High Court of Madrid rejected the appeal, noting that the author had continued to occupy the property even after discovering that it belonged to the bank. It also ruled that the family and economic circumstances of the author had been duly taken into account by the lower court and therefore upheld the partial nature of the exemption.

2.5 In March 2017, the author requested the bank that owns the apartment to regularize her situation by entering into a rental agreement with her.

2.6 On an unspecified date, the Allocations Department of the Subdirectorate General for Allocations and Citizen Support of the Community of Madrid rejected the housing application submitted by the author to the Madrid Social Housing Agency. In its decision, the Allocations Department explained that it was evident that the author had been occupying her residence without sufficient title to do so, and this disqualified her application for housing pursuant to article 14 (1) (f) of Decree No. 52/2016 of 31 May, which regulates the allocation of social housing.³

2.7 On 1 September 2017, the bank requested that the author be forcibly evicted, pursuant to the judgment of 2 December 2016. On 31 January 2018, Madrid Criminal Court No. 28 ordered the author to vacate the property voluntarily within one month, warning that

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

² At the time of the criminal proceedings, the author received a minimum income support of €241.18, which constituted the total income of her family unit, including her adult child.

³ The author attached a copy of this decision to her individual communication. However, the document is undated. The author claims that, owing to difficulties in keeping her belongings together after her eviction, she has not been able to locate additional documentation indicating the dates of her application and the decision.

she would be forcibly evicted if she failed to do so. On 1 February 2018, the author requested that the eviction be postponed for one month on account of her particularly vulnerable situation. Her request was rejected in a ruling dated 9 February 2018. The author filed an application for review of this order, which was dismissed in another order dated 1 March 2018. This order was appealed by the author.

2.8 On 14 March 2018, the Court confirmed that the author should be evicted, and that the eviction could be carried out any time after 1 March 2018.⁴ On 20 April 2018, the eviction was scheduled for 16 May 2018. On 7 May 2018, the author requested that the eviction be postponed on account of her particularly vulnerable situation. This request was denied on 10 May 2018. The author filed an appeal, which was dismissed in a decision dated 31 May 2018. The author appealed this decision.

2.9 On 8 May 2018, the social services of Madrid City Council sent a report on the family's socioeconomic situation to Madrid Criminal Court No. 28, explaining that the author received minimum income support of only €655 per month and that it had not been possible to provide her with social housing owing to the large size of her family. On 9 May 2018, the author applied to the Municipal Housing and Land Company for emergency social housing.

2.10 On 16 May 2018, a judicial commission appeared at the author's home to carry out the eviction but proceedings were suspended because a crowd had formed in support of the author in front of her home. The judicial commission immediately rescheduled the eviction for 25 June 2018, notifying the author there and then.

2.11 On 21 June 2018, the author again requested that her eviction be postponed.

After the registration of the communication

2.12 On 25 June 2018, at 7 a.m., at least 30 officers from the national police's riot squad were deployed in the vicinity of the property, cordoning off the building and establishing a security perimeter. According to the author, this caused significant anxiety and emotional distress for all members of the family, particularly her youngest children. Support workers from the Social Services Office entered the building first and explained to the family that it could not offer them emergency housing, but only a few nights' stay in a hostel on the Vallecas industrial estate. The family was also informed that their pets would not be welcome in the hostel. The author decided to open the door voluntarily and left the property with those belongings that she herself and the people who had come to support her were able to carry, leaving most of her belongings inside. A representative of the bank that owns the property was present at the eviction and undertook to allow the author to move her belongings out at a later date. The representative then sealed the door of the house with a strip of sheet metal. After spending two days in a hostel, the family was transferred to the Pinar de San José shelter, where they stayed until October 2018 in a room with bunk beds, which they shared with another family that also had children.

2.13 On 3 July 2018, Madrid Criminal Court No. 28 issued a ruling rejecting the author's appeal against the order of 31 May 2018, which had become moot, since the eviction had already taken place.

2.14 On 5 July 2018, the Committee reiterated its request that the State party adopt interim measures in the form, given that the eviction had already taken place, of the immediate provision of adequate and stable alternative housing, in genuine and effective consultation with the author, in order to avoid causing her and her children additional irreparable harm. That same day, Madrid social services issued a report recommending that the author and her family be allocated housing from among the stock set aside under the Community of Madrid's special necessity quota. On 1 August 2018, the author filed a new request for public housing with the Madrid Social Housing Agency. This application was accepted and the author was placed on the corresponding waiting list. However, the Agency concluded that none of the criteria for initiating social emergency proceedings were met in the author's case.

2.15 One of the author's children was physically assaulted in the shelter where the family was residing, resulting in the family of the aggressor being transferred to another shelter.

⁴ This is the date indicated in the ruling.

Through the efforts of social organizations working to support the family's claim to housing, 93,000 signatures were collected and a meeting was organized with the Regional Minister for Housing of the Community of Madrid, who undertook to quickly find housing for the family. In October 2018, the family was informed that it would have to leave the shelter and a public protest took place outside the building to prevent this from happening. Following the protest, the family was placed in another shelter in Puerta de Toledo, where they were forced to sleep in two separate, single-sex rooms and adhere to a 10 p.m. curfew. In November 2018, with the help of an association, the family was offered an apartment for a period of six months.

The complaint

3. In her initial communication, the author claimed that her eviction, along with her children, constituted a violation of article 11 of the Covenant in view of the fact that she had no adequate alternative housing. The author explained that her income could not cover the cost of alternative housing, as her total income amounted to €735.90 per month, which she received in the form of minimum income support for social inclusion. She added that the public authorities had failed to offer her alternative housing despite the prospect of her imminent eviction.

State party's observations on admissibility and the merits

4.1 On 27 February 2019, the State party submitted its observations on the admissibility and the merits of the communication. It begins by outlining a number of initiatives taken to protect the right to adequate housing in Spain. The State has used its powers to introduce a moratorium, until 2020, on foreclosure-driven evictions affecting vulnerable persons. In December 2018, with the adoption of Royal Decree-Law No. 21/2018, it had also introduced a set of urgent measures to improve access to housing, but these measures were rescinded on 22 January 2019 after failing to garner the Congress of Deputies' approval.⁵ However, the State party describes various other housing measures currently in the pipeline that should increase legal security for tenants and encourage the construction of social housing.⁶

4.2 The State party also highlights other instruments, such as the Comprehensive National Strategy for the Homeless 2015–2020 and the State Housing Plan 2018–2021.⁷ It adds that the Autonomous Communities have also passed a number of housing-related laws.

4.3 The State party argues that treaty bodies should not act as courts of third instance and that their analyses should therefore be based on the established facts and the consideration and assessment of those facts conducted by the national courts.⁸ In the present case, according to the judgment of Madrid Criminal Court No. 15, the author was unlawfully occupying the property. Consequently, the eviction was entirely correct. The State party notes that the author has not alleged a violation of procedural safeguards during her trial or in the execution of the judgment.

4.4 The author resides in the Community of Madrid, where social housing is managed by the Madrid Housing Institute, established pursuant to Decree No. 19/2006 of 9 February. This Decree establishes the following as a requirement for applicants for housing: "Not to be occupying a house or property without sufficient title to do so." The Community of Madrid has established an emergency social housing stock so as to be able to offer an immediate solution to individuals and families who, because of their current circumstances, are experiencing serious difficulties in meeting their housing needs. Emergency housing is allocated, in almost all cases, by order of priority, according to each applicant's level of need. Situations of particular necessity that are taken into consideration in the allocation of such housing include being at risk of imminent eviction; being a victim of gender-based violence or violence motivated by race, sexual orientation or identity, religion, belief or disability; living in poor housing conditions or in substandard housing; living in a space that is too small or for which the rent is equivalent to more than 30 per cent of the total

⁵ The State party details the provisions of the Royal Decree-Law without explaining how they apply to the present case.

⁶ The State party details each of these measures without explaining how they apply to the present case.

⁷ The State party details these policies without explaining how they apply to the present case.

⁸ See Human Rights Committee communication No. 300/1988 (*J.H. v. Finland*).

family income; and living in precarious housing with the consent of the owner of the property.

4.5 On 1 August 2018, with the legal obstacle presented by her occupation of a dwelling without title having been removed, the author's application for housing under the priority procedure was admitted; it has been allocated 16 points and currently occupies fifty-first place on the general quota waiting list, in the subquota for four-bedroom properties. In view of the principles of openness, transparency and equality that govern the allocation of public housing, the author's score and her place on the waiting list cannot be adjusted.

4.6 In an effort to increase available resources, the Social Housing Agency (formerly the Madrid Social Housing Institute) transferred a total of 32 developments, comprising 2,935 properties, to an entity that assumed all the rights and duties of the Social Housing Institute. Since the transfer, the Social Housing Institute has completed work on at least six new residential developments that have now been made available to the public, making a total of almost 1,000 new homes.

4.7 Madrid City Council is responsible for providing temporary, community or shared emergency accommodation in cases of socio-residential exclusion. Furthermore, it has assumed management of the Municipal Housing and Land Company, which has a public housing stock of 6,061 homes and plans to construct another 4,200. A programme is in place through which housing may be allocated to persons who have recently lost or are at risk of losing their homes due to non-payment of rent and to persons living in poor housing conditions or in housing that is not suited to their specific needs. The Council has maintained effective and adequate consultation with the author at all times. The Housing Emergency Advisory Service became involved on 5 February 2018 and tried to persuade the bank that owns the property to regularize the author's situation by entering into a public rental agreement with her but succeeded only in postponing her eviction for two months. Social services offered the author alternative housing from among municipal resources on a temporary basis, which was shared and tied in with a social support programme, where the author and her family lived as of 27 June 2018. The author applied for housing with the Municipal Housing and Land Company on 9 May 2018 and is currently registered in the priority programme of this other housing agency, having been allocated 76 points. Housing is currently being allocated to applicants with higher scores. The State party concludes that the author has received alternative accommodation, tied in with a social support programme.

4.8 The State party also submits that the author's eviction from her home did not constitute a forced eviction within the meaning of general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on forced evictions, as they do not cover eviction on the grounds of unlawful appropriation. The offence of unlawful appropriation is defined in article 245 of the Criminal Code, and this definition has been interpreted in the case law of the Supreme Court.⁹ In this offence, the legally protected interest is the right to own property, as enshrined in article 17 of the Universal Declaration of Human Rights. Furthermore, the occupation of a property that does not constitute a dwelling is only subject to punishment under Spanish law in the event of conduct that poses a substantial risk or danger to the interest protected under criminal law; there is a considerable amount of case law which maintains, for example, that criminal charges of unlawful appropriation are disproportionate in cases where the occupied property is in a state of abandon or poor repair.¹⁰ Similarly, case law frequently supports exemptions granted on the grounds of the state of necessity and consequent social vulnerability of the offending party. To benefit from such an exemption, the offender must have been in a precarious economic situation at the time when the criminal act was committed and must have been experiencing serious difficulties as a result of the indigent situation at the root of the unlawful occupation. Furthermore, the precarious situation must have lasted for a considerable period of time and the offender must have been unable to find an alternative solution to his or her housing needs during this time. According to case law, a potential situation of necessity may justify the temporary occupation of another's property but not its occupation and residence therein for an extended period of time.

⁹ See Supreme Court judgment No. 800/2014 of 12 November 2014.

¹⁰ See Provincial High Court of Segovia judgment of 29 October 1998, Provincial High Court of Girona judgment of 5 February 1999 and Provincial High Court of Valencia judgment of 4 February 2000.

4.9 The State party submits that the present case does not involve a tenancy protected by article 11 of the Covenant and that the return of the property to its owner therefore does not constitute a forced eviction within the meaning of article 11 of the Covenant and the Committee's case law. Paragraph 3 of general comment No. 7 states that the prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the international human rights covenants. Furthermore, the Special Rapporteur on adequate housing does not refer to cases of illegal occupation in her basic principles and guidelines on development-based evictions and displacement.¹¹ Similarly, Fact Sheet No. 25 on forced evictions and human rights issued by the Office of the United Nations High Commissioner for Human Rights states that forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State, and provides a list of possible causes of forced eviction in which unlawful occupation does not appear. In addition, in paragraph 8 (a) of its general comment No. 4, the Committee lists only forms of lawful occupation, indicating that tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements, including occupation of land or property. Moreover, general comment No. 7 assumes, or presumes, lawful occupation of the property, stating in paragraph 11 that, whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected. Thus, the author's occupation of the property was not one of the peaceful forms of tenancy protected by article 11 of the Covenant. Any other interpretation would be tantamount to validating a criminally unlawful act by means of the right to housing and would constitute a violation of the owner's right to property.

4.10 The State party concludes that there was no forced eviction in the author's case, that the judgment of Madrid Criminal Court No. 15 protects the right to property of the owner of the apartment, and that the author has received continuous support from the Spanish authorities, to the maximum of their available resources, and is currently waiting to be allocated public housing.

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

5.1 On 8 May 2019, the author submitted her comments on the State party's observations. The author submits that the measures taken in the years prior to the events described in the communication are not relevant to its subject matter, besides proving to be insufficient. Furthermore, the measures contained in Royal Decree-Law No. 21/2018 relate to urban lease agreements and are therefore not applicable to the author's case.

5.2 None of the Autonomous Community housing laws mentioned are relevant to Madrid, and their effectiveness has been severely limited; application of the laws in question has in fact been suspended by the Constitutional Court after they were challenged by the central Government. The author points out that the lack of coordination between the various administrations, which is evident in the present case, itself amounts to a violation.¹²

5.3 The author considers that, had the State party complied with the recommendations made by the Committee in its Views on the case of *Ben Djazia and Bellili v. Spain*, the violation that occurred in her case might have been avoided.¹³ The Committee's Views were published not in the Official Gazette, but rather in the Bulletin of the Ministry of Justice, and were not brought to the attention of the persons affected or of groups vulnerable to difficulties in terms of access to housing. Furthermore, the State party has not ensured that genuine and effective consultation takes place prior to the eviction of destitute persons. Judicial bodies issue eviction orders without so much as verifying how many persons are living in a dwelling and, in some cases, even order the eviction of "unknown occupants",¹⁴ who are thus deprived of any protection. Furthermore, a new legislative initiative has been proposed that would further expedite the eviction of persons occupying

¹¹ A/HRC/4/18, annex I.

¹² The author references article 27 of the Vienna Convention on the Law of Treaties.

¹³ *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 21.

¹⁴ Act No. 1/2000 of 7 January on civil procedure, art. 437 (3 *bis*).

property without legal title and prevent them from initiating court action. According to data from the General Council of the Judiciary, the number of evictions increased by 6.73 per cent in 2018 in the Community of Madrid and by 2.56 per cent in Spain as a whole.¹⁵

5.4 The author underlines that, as proved by the judgment of 2 December 2016, she was in a situation of necessity when occupying the property without legal title. In addition, the apartment was owned by a bank that received a cash injection from public funds in 2012 and whose ownership is now 60 per cent public.¹⁶ Therefore, her case cannot be treated in the same way as a case in which the property is owned by a private individual. The apartment occupied by the author, in addition to being empty and without any known use or purpose, was part of the State's assets, since it was owned by a bank rescued with public funds. The author adds that, in accordance with Act No. 1/2013,¹⁷ having been acquired by the bank as the result of non-payment of a mortgage, the apartment could have been made available to persons of limited means, like her. However, despite the author's repeated requests for a public rental agreement, the bank refused to enter into any agreement and instead pursued criminal proceedings against her. Ultimately, the bank sold the home to an investment firm specializing in the acquisition of real estate made available through seizures and evictions, resulting in the author's eviction on 25 June 2018.

5.5 With regard to the State party's explanation of the conditions governing the allocation of social and emergency housing in the Community of Madrid, which exclude persons occupying a dwelling without legal title, the author considers that the continuing application of these regulations make it impossible for persons in circumstances such as hers to regularize their situation and are contrary to the Covenant.

5.6 The author recalls that she submitted several requests for suspension, that she brought the Committee's request for interim measures to the authorities' attention, that she applied for public and emergency housing, that she brought the situation to the attention of the social services of Madrid City Council, which issued reports warning that the author was at risk of social exclusion, and that, despite all this, on 25 June 2018, a disproportionately large police unit was deployed to evict the family, who were then transferred to a shelter.

5.7 The author maintains that her children have been seriously affected by the eviction and that their school performance has been affected by their lack of a permanent home. Her 18-year-old son was attending school at the time of the eviction and has registered for the Youth Guarantee Programme. Her 14-year-old son has repeated a school year and has had to undergo psychiatric treatment, in particular because of the shame he feels at having to live in a shelter. Her 12-year-old daughter has had to receive assistance from a social worker and support from the Red Cross. Her two 8-year-old sons have been very unsettled at the shelter and one of them has developed a fear of the police following the family's eviction by the riot squad and avoids parties and crowded events. Her other 8-year-old has chronic atopic dermatitis that has been aggravated by the shelter's plastic mattresses. The fact that the family is separated by sex in the shelter has also affected him, as he was not ready, at the age of 7 years old, to be separated from his mother in such circumstances. According to the author, school staff claim that the twins' learning has been affected by the distance they have to travel to attend class, owing to which they regularly miss out on teaching hours.¹⁸

5.8 The author concludes that her eviction was a forced eviction, during which the State party disregarded its obligations towards her family, which was in a situation of necessity. In addition, the eviction was carried out contrary to the Committee's express request, which amounts to a violation of the Optional Protocol. The events that have occurred following the eviction have inflicted even greater harm on the author and her children. The author posits that there are serious shortcomings in terms of housing coverage in a country with considerable resources, which, moreover, has already been the subject of previous Views by the Committee on the same subject.

¹⁵ <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Datospenales--civiles-y-laborales/Civil-y-laboral/Efecto-de-la-Crisis-en-los-organos-judiciales/>.

¹⁶ Through the Fund for Orderly Bank Restructuring.

¹⁷ Act No. 1/2013, of 14 May, on measures to increase protection for mortgage debtors, debt restructuring and public rental contracts.

[¹⁸ The author does not provide supporting documentation for any of these claims.]

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 takes note of the State party's argument that the present case does not involve an eviction within the meaning of the term used in the Committee's general comments No. 4 and 7, which provide authoritative interpretations of the Covenant, and that this complaint therefore falls outside the Committee's remit (see paragraph 4.10 above). The Committee recalls that, as established in paragraph 11 of its general comment No. 7, even when evictions are justified, such as in the case of persistent non-payment of rent or damage to rented property without reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected. These considerations also apply to occupation without legal title, since this type of occupation could ultimately come to constitute, for some persons, a form of home, and could therefore fall within the scope of protection of the right to housing. Accordingly, although lack of legal title might justify an eviction, the procedures that lead to the eviction being ordered and the eviction being carried out must nonetheless be conducted in a manner compatible with the Covenant that guarantees appropriate legal remedies for the persons affected. The Committee notes that, as mentioned by the State party, paragraph 3 of general comment No. 7 states that the prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights. The Committee notes that the author is not claiming that her eviction constituted a violation of national law. Rather, her complaint is that the eviction was not carried out in conformity with the provisions of the Covenant, in accordance with the second half of the above-quoted sentence from general comment No. 7. The Committee is therefore of the view that the communication meets the requirement of referring to a possible violation of a right set forth in the Covenant, in accordance with article 2 of the Optional Protocol.

6.3 The Committee notes that the communication meets the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communication admissible and proceeds to its consideration 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 proceeds to determine which facts may be considered proven. The author claims that she rented an apartment from a person who, in March 2013, turned out not to be the owner of the property. However, the Committee notes that the author does not provide documentation to substantiate this claim, which was considered and dismissed by the national judicial authorities. In the absence of any suggestion that this decision was arbitrary or constitutes in itself a violation of a Covenant right, the Committee will not reassess this establishment of the facts, considering them to have been sufficiently proven for the purposes of this assessment. It has been proven that the author and her children were occupying an apartment without the consent of the legal owner owing to her situation of necessity. The author was convicted of a minor offence of unlawful appropriation, being granted a partial exemption because of her situation of necessity, and was ordered to vacate the property she was occupying. While the author was living in the apartment, she submitted an application for public housing, which was rejected because she did not satisfy the requirement for applicants not to be occupying a dwelling without legal title. On 25 June, the author was evicted together with her children.

7.3 After the eviction, social services offered the author and her family temporary, shared accommodation in a shelter (see para. 4.7 above). The family stayed in this shelter until October 2018 and then in another from October to November of the same year. The

author maintains that in the second shelter the members of her family were separated by sex and makes allegations about the consequences of their stay in these shelters (see para. 5.7 above). However, these consequences have not been substantiated by documentation and were not reported to the national authorities and, accordingly, cannot be given the weight of proven facts.

7.4 The author claims that her eviction violated her and her children's right to adequate housing, as they were evicted without account being taken of the fact that they did not have alternative accommodation and consideration being given to the consequences of the eviction order. She claims that the authorities did not allocate public housing to the family, but rejected their application on the basis that they were occupying a dwelling without legal title. She argues that this requirement places persons who find themselves in situations such as hers in a vicious circle and constitutes, in itself, a violation of the right to housing (see para. 5.5 above). The author also claims that her eviction constitutes a violation of article 5 of the Optional Protocol (see para. 5.8 above). The State party argues that since the author had been found guilty of unlawful appropriation, eviction was the most appropriate measure (see paras. 4.5 and 4.9 above). The State party also submits that the author has applied for social housing and is currently on a waiting list (see para. 4.5 above) and that the alternative accommodation provided in a shelter was the best possible alternative housing that available municipal resources allowed.

7.5 In the light of the Committee's determination of the relevant facts and of the arguments submitted by the parties, the questions raised by the communication are as follows: firstly, whether the eviction of the author and her children from their habitual residence on the grounds that she was occupying the apartment without legal title and their subsequent transfer to a shelter constituted a violation of the right to adequate housing recognized under article 11 (1) of the Covenant; secondly, whether the rejection of the author's first housing application on the grounds that she was occupying a dwelling without legal title constituted a violation of the same right; and, lastly, whether there was a violation of article 5 of the Optional Protocol in this case, since the State evicted the author despite the Committee's request for interim measures. To answer these questions, the Committee will first recall its case law on protection against forced evictions. It will then examine the specific case of the author's eviction and address the issues raised in the communication.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights¹⁹ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.²⁰ The right to housing should be ensured to all persons irrespective of income or access to economic resources²¹ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.²²

8.2 Forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances.²³ The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality between the legitimate objective of the eviction and its consequences for the evicted persons.²⁴

8.3 For an eviction to be compatible with the Covenant, it must be provided for by law and carried out as a last resort, and the persons concerned must have had prior access to an effective judicial remedy, in order to ascertain that the measure in question is duly justified, for example, in cases where there is no legal title for the tenancy. In addition, there must be a real opportunity for genuine and effective prior consultation between the authorities and the persons concerned, there must be no alternative means or measure less injurious to the

¹⁹ General comment No. 4 (1991), para. 1.

²⁰ *Ibid.*, paras. 7 and 9.

²¹ *Ibid.*, para. 7.

²² *Ibid.*, para. 12.

²³ *Ibid.*, para. 18, and general comment No. 7, para. 1.

²⁴ *Ben Djazia and Bellili v. Spain*, para. 13.4.

right to housing available, and the persons concerned must not be left in or exposed to a situation constituting a violation of other Covenant or human rights.²⁵

Duty of States to provide alternative housing to persons in need

9.1 Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations. 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, resettlement or access to productive land, as the case may be, is available.²⁶ The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property.²⁷ In the event that a person is evicted from his or her home without the State party granting or guaranteeing alternative accommodation, 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.²⁸

9.2 The obligation to provide alternative housing to evicted persons who need it implies that, under article 2 (1) of the Covenant, States parties must take all necessary steps, to the maximum of their available resources, to uphold this right. States parties may choose a variety of policies to achieve this purpose.²⁹ However, all measures adopted should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right³⁰ as swiftly and efficiently as possible. Policies on alternative housing in cases of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.³¹

9.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected.³² It must also take account of the right of members of a family not to be separated.

9.4 In certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative dwelling may be used. However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing.

²⁵ *Ibid.*, para. 15.1.

²⁶ General comment No. 7, para. 16.

²⁷ *Ben Djazia and Bellili v. Spain*, para. 15.2.

²⁸ *Ibid.*, para. 15.5. See also the Committee's statement regarding 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).

²⁹ General comment No. 4, para. 8 (c). See also para. 13.

³⁰ General comment No. 3 (1990) on the nature of States parties' obligations, para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

³¹ See, for example, the report of 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 (A/HRC/31/54, paras. 28–38).

³² General comment No. 4, para. 8.

Requirements for access to alternative housing and occupation without title

10.1 The Committee considers that, with a view to making efficient use of the resources of their social services, States parties may set criteria or conditions that applicants must satisfy in order to receive social benefits such as alternative housing. Similarly, States parties may take measures to protect private property and to prevent the illegal occupation of property in bad faith. However, the conditions governing access to social services must be reasonable and carefully designed, not only so as to prevent potential stigmatization but also to ensure that the conduct of a person in need of alternative housing cannot in itself be used by the State to justify denying his or her application.³³ In addition, the interpretation and application by courts and administrative authorities of rules for access to social housing or alternative accommodation must avoid perpetuating the systemic discrimination and stigmatization of those who live in poverty and who occupy property without legal title to do so out of necessity and in good faith.³⁴

10.2 Furthermore, since the lack of affordable, available housing is rooted in growing inequality and housing market speculation, States parties have an obligation to resolve these structural problems through appropriate, timely and coordinated responses, to the maximum of their available resources.³⁵

Analysis of the proportionality of the author's eviction

11.1 The Committee will consider whether the author's eviction from the apartment she was occupying constituted a violation of her right to adequate housing or whether the authorities' intervention constituted a justified limitation on her right to housing in accordance with article 4 of the Covenant. The author took up residence in the apartment on 1 March 2013. On 2 December 2016, on the basis of a complaint from the bank that owns the property, Criminal Court No. 15 convicted the author of a minor offence of unlawful appropriation, granting her a partial exemption because of the situation of necessity in which she had taken possession of the property. The Court ordered her to surrender possession of the apartment to the bank in a judgment that was confirmed by the Provincial High Court of Madrid on 25 July 2017.

11.2 The Committee notes that the author did not comply with the order to surrender possession of the property and remained in the apartment, but that her eviction was not carried out until 25 June 2018.

11.3 In her applications for suspension of the eviction, the author reported that she was in a particularly vulnerable economic situation and that she did not have alternative housing in which to live if she were evicted. In addition, on 8 May 2018, the social services of Madrid City Council sent a report to Madrid Criminal Court No. 28 stating that they had been unable to provide social housing for the family. The Committee notes that the author's claims regarding her right to housing were not addressed by the judicial authorities. In this regard, the Committee also notes that, despite the fact that the author's requests for suspension were rejected on 9 February and 10 May 2018, her eviction was not carried out until 25 June 2018, one and a half years after the initial court judgment.

11.4 The Committee notes that the author was able to appeal the decisions taken at first instance and that she was assisted by counsel. As pointed out by the State party, the author has not complained that any procedural safeguards were violated during her trial or in the execution of the judgment.

11.5 The Committee also notes that, for the State party, allowing the author to remain in the apartment would be tantamount to validating criminally unlawful conduct on the grounds of the right to housing and would constitute a violation of the owner's right to property under national law. The Committee notes that the right to private property is not a

³³ *Ben Djazia and Bellili v. Spain*, para. 17.2. Report of 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 (A/HRC/40/61), para. 41.

³⁴ Report of 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 (A/HRC/40/61), para. 41.

³⁵ *Ben Djazia and Bellili v. Spain*, para. 17.2. Report of 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 (A/HRC/40/61), paras. 27–29.

Covenant right, but recognizes 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 contained in the Covenant. Given that the author was convicted of a minor offence of unlawful appropriation, the Committee considers that there were legitimate reasons for her eviction and that it could therefore be justified. Nevertheless, the Committee notes that Madrid Criminal Court No. 28 did not conduct an analysis of the proportionality of the legitimate objective of the eviction to its consequences for the persons evicted. Specifically, the court did not weigh the benefits of the measure – in this case, protecting the right to property of the bank that owns the apartment – against its possible consequences for the rights of the evicted persons. Analysing the proportionality of an eviction entails examining not only the consequences of the measures for the evicted persons but also the owner's need to recover possession of the property. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions, as in the current case. Finding an eviction to be an unreasonable measure at a specific moment in time does not necessarily mean that an eviction order cannot be issued against the occupants. However, the principles of reasonableness and proportionality might make it necessary to suspend or postpone the eviction order so as to avoid subjecting the evicted persons to situations of indigence or violations of other rights contained in the Covenant. An eviction order may also be dependent on other factors, such as an obligation for the administrative authorities to step in to help the occupants in order to mitigate the consequences of the eviction.

11.6 In this case, although the author claimed that the measure would affect her right to adequate housing, neither Criminal Court No. 28 nor any other judicial authority followed up on her claims by considering the proportionality of the intervention, as States parties are required to do pursuant to article 4 of the Covenant. Madrid Criminal Court No. 15 did conduct an analysis of the proportionality between the damage that the author had caused in committing the offence of unlawful appropriation and the harmful situation from which she was attempting to escape by committing that act, and found it appropriate to apply a partial exemption on grounds of necessity. However, this analysis was not applied to the decision, set out in the same judgment, to order the repossession of the property. Furthermore, the State party's legislation did not provide the author with any other judicial mechanism through which to challenge the eviction order, which was to be executed almost immediately, that would have given another judicial authority the opportunity to analyse the proportionality of the eviction and the conditions in which it was carried out.

11.7 The Committee is of the view that the State party should develop a legal framework to regulate evictions of persons who are occupying property without legal title when the property in question constitutes their home. This framework should stipulate the criteria that the judicial authorities should take into account when assessing eviction applications in such situations: for example, whether or not the person was occupying the property in good faith; the personal circumstances of the occupants and their dependents; and whether they cooperated with the authorities in the search for solutions suited to their situation. However, the State party will be committing a violation of the right to adequate housing if it stipulates that a person who is occupying a property without legal title must be evicted immediately irrespective of the circumstances in which the eviction order would be carried out. The Committee therefore considers that the eviction, insofar as it was conducted without a prior assessment of the proportionality between the aim pursued by the measure and its consequences for the evicted persons, and thus without satisfying the conditions established in article 4, constituted a violation by the State party of the author's and her children's right to housing, as set forth in article 11 of the Covenant.

Author's access to public housing

12.1 The Committee notes that the author attempted to remedy her situation as an occupant without legal title and put an end to the unlawful conduct by applying for social housing while she was living in this precarious situation, and that this application was rejected on the grounds that the current regulations establish as an essential requirement for all applicants that they should not be occupying a dwelling or property without sufficient title to do so and without the consent of the owner. The Committee notes that the State party does not dispute that the author's family needed social housing and merely maintains that, prior to the eviction, the author could not have applied for housing before the public

housing bodies of the Community of Madrid. The Committee understands that this requirement may be intended to reduce the prevalence of illegal occupation of housing, but notes that the State party does not provide any arguments to justify the requirement that excluded the author from the list of applicants for housing. The State party has also failed to justify the absence of other measures to reduce illegal occupations that would have a lesser impact on individuals, such as reducing the number of uninhabited homes.

12.2 The Committee considers that the requirement with which the author had to comply in order to gain access to the waiting list of applicants for public housing placed her at an impasse, forcing her and her children either to move into a temporary shared shelter or to live in destitution before being able to apply for social housing. It also considers that this restriction on access to social housing might cause the children to suffer the consequences of the parents' actions. It should be noted that, in this case, the State neither demonstrated nor claimed prior to the eviction that it was unable, for want of available resources, to provide alternative housing to the author and her family. Rather it refused to place her on the applicants' waiting list because she had occupied a property without legal title, thereby denying her any possibility of gaining access to available alternative housing. The Committee considers that application of this requirement is incompatible with the nature of the right to adequate housing. For these reasons, the Committee concludes that excluding the author from the social housing programme without taking into account her situation of necessity perpetuated her irregular situation and led to her eviction. The Committee therefore considers that this exclusion constitutes a violation by the State party of the author's and her children's right to housing, as set forth in article 11 of the Covenant.

Interim measures and eviction of the author

13.1 The author claims that the fact that her eviction took place despite the Committee's request for interim measures amounts to a violation of article 5 of the Optional Protocol. On 22 June 2018, the Committee requested the State party to suspend the eviction of the author and her children while the communication was being considered or, alternatively, to provide them with adequate housing in genuine consultation with the author, in order to avoid causing them irreparable harm. It further notes that, on 25 June 2018, the author was evicted. The Committee also notes that, according to the State party, by subsequently placing the author and her children in shelters, it provided alternative housing from among available municipal resources, on a temporary basis, which was shared and tied in with a social support programme. The Committee notes, however, that the author does not consider shelters to constitute alternative housing and argues that her stay in these shelters had negative effects on her children. The Committee observes that the author claims to have stayed in the first shelter until October, after which time she was informed that she had to leave, and that it was only after a public protest that she was assigned accommodation in a second shelter, where she remained until November. The author also claims that, in this second shelter, the family was separated by sex and that her youngest children, who were 8 years old at the time, had to sleep apart from their mother.

13.2 The Committee recalls that, in order for housing to qualify as adequate, it must provide security of tenure, which the shelters did not do. In this regard, the Committee notes that the longest period during which the author and her children were able to stay in the same shelter was three months. At the end of this time she was informed that she would have to leave, together with her family, although this situation was later mitigated somewhat thanks to a public protest. Accordingly, the shelters were a temporary housing solution, as the State party has described them, but they did not constitute adequate housing.

13.3 Having found that the alternative provided to the author did not constitute adequate housing, and in the absence of other explanations from the State party as to why the request for interim measures could not be respected, in accordance with its case law on States parties' obligation to comply with interim measures in good faith,³⁶ the Committee considers that the State party violated article 5 of the Optional Protocol in this case.

³⁶ *S.S.R. v. Spain* (E/C.12/66/D/51/2018), para. 7.7.

D. Conclusion and recommendations

14. On the basis of all the information provided and in the particular circumstances of this case, the Committee considers that the eviction of the author and her children without an assessment of proportionality by the authorities constituted a violation of their right to adequate housing. Moreover, the Committee considers that the refusal of the author's application for public housing without taking into account her situation of necessity and solely on the basis that she was occupying a property without legal title in itself amounts to a violation of her right to adequate housing.

15. The Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the State party violated the author's and her children's right under article 11 (1) of the Covenant. The Committee also considers that the State party has violated article 5 of the Optional Protocol. In the light of the Views in the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the author and her children

16. The State party is under an obligation to provide the author and her children with an effective remedy. In particular, it should (a) if they are not currently in adequate housing, reassess the necessity of their situation 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; (b) provide the author and her children with financial compensation for the violations suffered; and (c) reimburse the author for the legal costs reasonably incurred in submitting this communication.

General recommendations

17. The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State has an obligation to:

(a) Establish a legal framework regulating the eviction of people from their homes that incorporates a requirement for the judicial authorities to conduct an analysis of the proportionality of the aim pursued by the measure relative to its consequences for the persons evicted, and of its compatibility with the Covenant, in all cases, including when the properties are occupied without legal title;

(b) Ensure that persons subject to an eviction order are able to challenge the decision or lodge an appeal with a view to having the judicial authorities assess the proportionality of the aim pursued by the measure relative to its consequences for the persons evicted, and its compatibility with the Covenant in all cases, including when the properties are occupied without legal title;

(c) Adopt the necessary measures to ensure that all persons have equal access to the social housing stock, by removing any unreasonable condition that might exclude persons at risk of indigence. In particular, the State should end the practice of automatically excluding persons who are occupying a property without legal title because they are in a situation of necessity;

(d) 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 consultation with the persons concerned and once the State 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 vulnerable situations;

(e) 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. 4.³⁷ This plan should establish the resources, measures, indicators, time frames and evaluation criteria necessary to guarantee these individuals' right to housing in a reasonable and measurable manner;

(f) Establish a protocol for complying with requests for interim measures issued by the Committee and inform all relevant authorities of the need to respect such requests in order to ensure the integrity of the procedure.

18. In accordance with article 9 (2) of the Optional Protocol and rule 18 (1) of the provisional 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.

³⁷ See also the Committee's concluding observations on the sixth periodic report of Spain (E/C.12/ESP/CO/6), para. 36.