



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 199/2020*, **

Communication submitted by:	M.T.R.
Alleged victims:	The author, L.C.C., F.V.T.C. and A.B.T.C.
State Party:	Spain
Date of communication:	18 November 2020 (initial submission)
Date of adoption of decision:	14 February 2025
Subject matter:	Eviction of a family for non-payment of rent
Procedural issue:	Exhaustion of domestic remedies
Substantive issue:	Right to adequate housing
Article of the Covenant:	11 (1)
Article of the Optional Protocol:	3

1.1 The author of the communication is M.T.R., a national of Spain born on 8 November 1971. He submits the communication on behalf of himself, his wife, L.C.C., born on 3 March 1971, and their two minor children, F.V.T.C., born on 21 October 2009, and A.B.T.C., born on 22 March 2011, all of whom are Spanish nationals. The author claims that eviction from the dwelling that he occupies together with his wife and their children would violate their rights under article 11 of the Covenant. The Optional Protocol entered into force for the State Party on 5 May 2013. The author is not represented by counsel.

1.2 On 26 November 2020, the Committee, acting through its Working Group on Communications, registered the communication and, in accordance with article 5 of the Optional Protocol, requested the State Party to take measures to avoid possible irreparable harm to the author, his wife and their children by suspending their eviction from the accommodation they occupied while the communication was under consideration by the Committee or, alternatively, by granting them alternative accommodation on grounds of special need, within the framework of genuine and effective consultation with the authors.

* Adopted by the Committee at its seventy-seventh session (10–28 February 2025).

** The following members of the Committee participated in the examination of the communication: Aslan Abashidze, Lazhari Bouzid, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Charafat El Yedri Afailal, Peters Sunday Omologbe Emuze, Santiago Manuel Fiorio Vaesken, Ludovic Hennebel, Joo-Young Lee, Karla Vanessa Lemus de Vásquez, Seree Nonthasoot, Giuseppe Palmisano, Laura Elisa Pérez, Preeti Saran and Michael Windfuhr. Pursuant to rule 23 of the rules of procedure under the Optional Protocol, Julieta Rossi did not take part in the examination of the communication.



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

Factual background¹

Before registration of the communication

2.1 The author was born in Argentina and, on 25 April 2017, migrated with his wife and two children to Gran Canaria, Spain. He obtained a job there three months later, through which he earned €800 per month. The family rented a property for one month before moving to different accommodation for six months, for which it paid €600 in monthly rent.

2.2 In view of its financial difficulties, in August 2017 the family began receiving assistance from the social services of the municipal council of Mogán, Gran Canaria, and multiple municipal social emergency subsidies for food, rent, clothing and footwear, school supplies and textbooks.

2.3 On 22 June 2017, the author's daughter was recognized as having an overall degree of disability of 50 per cent owing to her autism and developmental disorder.

2.4 On 8 November 2017, the author and his family moved into a property in the municipality of Mogán, Gran Canaria, after signing a one-year lease. That lease was renewed for another year, with a monthly rent of €660, before being renewed again with a reduced rent of €600 per month.

2.5 The author quit his first job in late 2018. In February 2019, he started a new role in a company that went bankrupt in September that year. The author found a new job in December 2019.

2.6 On 18 December 2019, the author received a subsidy of €900 from the municipal social services to cover half his rent for November 2019, December 2019 and January 2020.

2.7 On 17 April 2020, the owner of the author's accommodation filed an eviction application on grounds of non-payment of rent and other charges, claiming a total of €2,423.59 in unpaid rent. The owner alleged that the author had failed to pay the full amount of his rent and water and electricity bills since December 2019.

2.8 In June 2020, the author's employment contract was not renewed owing to the economic crisis caused by the coronavirus disease (COVID-19) pandemic. Since then, the author has found other temporary jobs and also had periods of unemployment.

2.9 On 21 July 2020, the San Bartolomé de Tirajana Court of First Instance No. 2 summoned the author to appear before it on 9 October 2020. The Court also established that, in the event that it ruled against the author and the author failed to appeal that decision, the eviction would take place on 30 November 2020.

2.10 On 18 August 2020, the social services of the municipal council of Mogán granted the author a subsidy for school meals for both of his children.

2.11 On 23 August 2020, the author filed an objection to the eviction application with the San Bartolomé de Tirajana Court of First Instance No. 2, claiming that his family was vulnerable because it included two minor children, one of whom had an overall degree of disability of 50 per cent as a result of autism. The author requested the Court to dismiss all the claims made by the plaintiff, to examine the proportionality and reasonableness of the eviction and to suspend or postpone the eviction in view of the family's vulnerability and the best interests of the children. The author provided the Court with a social services report dated 21 August 2020, which confirmed the family's social and economic vulnerability, thereby fulfilling the vulnerability criteria to be met for the application of Royal Decree-Law No. 11/2020 of 31 March 2020. The social services report indicated that, while the family was economically vulnerable, the non-payment of rent was not justified, as: (a) the author had received a subsidy of €900 in December 2019 to cover half his rent between November 2019 and January 2020; (b) he held two jobs; and (c), from February to April 2020, he had

¹ These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties.

received a municipal social emergency subsidy for food costs. According to the same report, the family's household income had been €2,120.15 in February 2020, €1,681.30 in March 2020, €1,097.42 in April 2020, €1,061.99 in May 2020 and €1,858.45 in June 2020.

2.12 On 13 October 2020, the San Bartolomé de Tirajana Court of First Instance No. 2 issued a ruling in which it instructed the author to pay the rent and other charges and ordered the family's eviction from the property. The Court referred to the report of 21 August 2020 by the social services of the municipal council of Mogán, which contained information on the family's income between January and June 2020 that confirmed that the family had had enough income to pay the rent, meaning that it was not in one of the vulnerable situations covered by the Royal Decree-Law cited by the author.

2.13 The author did not appeal against this ruling because he did not have the funds to pay the rent and charges owed, which, under article 449 of the Civil Procedure Act, is a requirement for initiating appeals in such cases.

2.14 With regard to the financial resources at the author's disposal in the months prior to the registration of the communication, the author maintains that the food allowance from the social services enabled him to support his family, despite the fact that he did not receive this allowance between April and 31 August 2020. He claims to have had no income of any kind in August and October 2020. In the final three months, he received only one month's worth of the unemployment subsidy, totalling €694.23. In November 2020, he received €243.81 in unemployment benefits. The author claims that he applied for the minimum basic income allowance but has not yet received a response. He receives the family protection pension twice annually and is still waiting to receive the dependency benefit in recognition of his daughter's status as a dependent person.

After registration of the communication

2.15 On 27 November 2020, the Court ordered the suspension of the eviction scheduled for 30 November 2020.

2.16 On 1 December 2020, the Court set the new eviction date as 20 January 2021.

2.17 On 20 January 2021, the author and his family were evicted from their accommodation. The author claims that no one from the social services was present during the eviction. He submits that the family found a temporary apartment by themselves. The author indicates that the social services told him that he had to look for housing on his own because they had no accommodation to offer him, but that they would cover the moving costs and the first month's rent for the property the family found.

2.18 On 1 February 2021, the author and his family signed a lease for a property in the town of Arguineguín in the municipality of Mogán, for which the monthly rent was €650. In June 2021, the author received a rental subsidy of €1,200.

Complaint

3. The author claims that the eviction would constitute a violation of article 11 of the Covenant and would lead to the exclusion and marginalization of his family, in particular his son and his daughter with disabilities, both of whom are minors. The author alleges that he cannot afford alternative housing in the municipality of Mogán and that nobody in his circle has the means to help his family or to offer alternative accommodation. He claims that he never submitted a written application for social housing because the social services had informed him that he had not been a resident of the Canary Islands long enough to apply. He further claims that the social services indicated that there was no social housing available.

State Party's observations on admissibility and the merits

4.1 On 12 September 2022, the State Party submitted its observations on the admissibility and merits of the communication.

4.2 With regard to admissibility, the State Party argues that the author submitted the communication without having first exhausted the remedies available under domestic law. The State Party submits that there is no record of the author's having lodged an appeal to

challenge the ruling against him or the decisions made, in execution of that ruling, to evict the property's occupants. It argues that the author also fails to provide any explanation in his communication to justify this failure to exhaust the available remedies. The State Party also emphasizes that it has no record of the author's having initiated the administrative procedure for the granting of social housing, as there is no application in his name for registration in the database of applicants for social housing maintained by the Canary Islands Housing Institute. Accordingly, the State Party submits that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol.

4.3 The State Party also maintains that the author's allegations of a violation of article 11 of the Covenant are manifestly ill-founded. The State Party indicates that, since the author and his family left the property in question in January 2021, they have been living in new accommodation and paying the rent; they also received an initial subsidy of €1,200 for this purpose. The State Party submits that, even if the author's complaint had been substantiated at the time of submission of the communication, subsequent events show that any grounds cited in the communication have lost all validity because the author and his family were at no point deprived of housing. In addition, the author failed to act diligently before the authorities by seeking alternative housing that would remedy his situation ahead of his imminent eviction. The State Party reiterates that the author failed to submit an application for registration in the database of applicants for social housing maintained by the Canary Islands Housing Institute and that he explained only that he had been told orally that no housing was available.

4.4 In terms of the merits of the case, the State Party provides information on the public authorities' coverage of the basic needs of the author and his family to the extent of available resources.² In view of that information, the State Party argues that the needs of the author and his family are, to the extent of available resources, provided for by these public resources. The State Party also maintains that no evidence was offered to show that, at the time the communication was submitted, the author and his family were in a situation of economic and social vulnerability that would have prevented them from accessing new housing on the private residential market in the event that they were evicted from the property they were occupying at the time.³

4.5 The State Party refers to the national regulations on the right to housing and the measures taken in response to the economic crisis.⁴ The State Party also refers to the parameters for determining the degree of fulfilment of the State's obligations under article 11 of the Covenant.⁵

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

5.1 On 14 November 2022, the author submitted his observations on the admissibility and merits of the communication.

5.2 With respect to the job provided to him by the municipal council of Mogán, the author indicates that the employment contract was for a duration of six months and was non-renewable, which meant that he was unable to pay the rent.

² For further details, see *El Korrichi et al. v. Spain* (E/C.12/D/188/2020), para. 4.6.

³ The State Party refers to a social services report of 5 August 2021 in order to argue that the author and his family were given special attention by the authorities, since they received various forms of financial support in addition to the above-mentioned rental assistance, including a €200 per month tax rebate on account of the fact that the minor daughter has a recognized overall degree of disability of 50 per cent, a family protection subsidy of €794 every six months and different social emergency subsidies. To meet their food and hygiene needs, the family received a €1,050 card for the period from 11 December 2020 to 11 March 2021 and a €1,200 card for the period from 29 March 2021 to 29 June 2021. From December 2020 to July 2021, the family's medication costs were covered. The State Party also notes that the author participated in the special employment programme for the 2020/21 period, through which he worked from December 2020 until 24 July 2021 as a construction worker. Once his employment contract ended, the author began receiving unemployment benefits and subsidies.

⁴ *El Korrichi et al. v. Spain*, para. 4.5.

⁵ *Ibid.*

5.3 In terms of the rental subsidy for enabling the family to move into new accommodation, the author claims that the relevant request was submitted and processed in February 2021, after the eviction, and that the funds were not received until four months later. Although he was told that the subsidy was enough to cover three months' rent, the author indicates that the monthly rent was €650. The author claims that he covered the costs of moving into the new property using an allowance intended to pay for therapy for his daughter with disabilities. The author affirms that he owes several months' worth of rent to his new landlord, but that the new landlord understands the situation in which the author and his family have found themselves as a result of the pandemic.

5.4 The author claims that the social services never offered him housing or gave him the opportunity to register for it, since the fundamental requirement is to have been resident in Spain for seven consecutive years. He affirms that, in 2020, he sent an email to the board of the Canary Islands Housing Institute in which he requested accommodation, but never received a reply. With regard to his participation in the special employment programme, the author claims that the dates indicated by the State Party are incorrect, since his employment contract started on 25 January 2021 and ended on 24 July 2021. The author claims that the salary received for this work was not enough to cover his family's basic needs. The author indicates that he has not received any further assistance from the social services, which have not contacted him for more than a year.

B. Committee's consideration of admissibility

6.1 Before 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 the communication is admissible.

6.2 The Committee takes note of the State Party's argument that the author has not exhausted all available domestic remedies, as he did not appeal against the ruling against him or the decisions executing the eviction order. The Committee is of the view that, for the purposes of article 3 (1) of the Optional Protocol, "available domestic remedies" are all remedies available in direct relation to the events that initially gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant.⁶ The Committee notes that the principal complaint put forward by the author in his communication is that evicting his family would be a violation of the Covenant owing to the absence of alternative housing. Therefore, the remedies that must be exhausted are, first and foremost, those directly related to the eviction, such as remedies aimed at preventing or delaying the eviction or serving to notify the courts of the lack of alternative housing.⁷ In this regard, the Committee notes that the author filed an objection to the eviction application with the Court, claiming that his family was vulnerable and requesting that the eviction be suspended or postponed until alternative housing could be found (see para. 2.11). The Committee notes that, as indicated by the author and established under the Civil Procedure Act, a requirement for filing an appeal in eviction proceedings for non-payment is to prove payment of the overdue rent and charges. The Committee notes the author's claim that he did not appeal against the ruling because he did not have the funds to pay the overdue rent and charges (see para. 2.13). In the light of the circumstances of the case, and in the absence of any justification from the State Party, the Committee considers that the remedy of appeal was not available to the author.

6.3 However, the Committee notes that there is no record, according to the information available in the file, of the author's having submitted a request, during the proceedings for the execution of the eviction order, that the eviction be suspended on grounds of his family's vulnerability. The Committee considers that this would have been an effective remedy aimed at delaying the eviction measure. In the absence of any information from the author to refute

⁶ *Hernández Cortés et al. v. Spain* (E/C.12/72/D/26/2018), para. 6.2; and *Moreno Romero et al. v. Spain* (E/C.12/69/D/48/2018), para. 8.2.

⁷ *Moreno Romero et al. v. Spain*, para. 8.2.

the State Party's argument concerning the failure to exhaust all remedies, it therefore concludes that the communication is inadmissible under article 3 (1) of the Optional Protocol.

C. Conclusion

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 (1) of the Optional Protocol;
 - (b) That the present decision shall be transmitted to the State Party and to the author.
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