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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. 51/2018*

Communication submitted by:	S.S.R. (represented by counsel)
Alleged victim:	The author
State party:	Spain
Date of communication:	1 August 2018 (initial submission)
Date of adoption of decision:	11 October 2019
Subject matter:	Eviction of the author from her home
Procedural issues:	Admissibility *ratione materiae*; non-substantiation of claims
Substantive issue:	Right to adequate housing
Article of the Covenant:	11 (1)
Articles of the Optional Protocol:	3 (2) (e) and 5

1.1 The author of the communication is S.S.R., a Spanish national born on 16 June 1995. She claims to have suffered a violation by the State party of her rights under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by counsel.

1.2 On 5 September 2018, the Committee, acting through its working group, registered the communication and, in accordance with article 5 of the Optional Protocol, requested the State party to suspend the eviction of the author while the communication was being considered or to provide her with adequate housing, in genuine consultation with her, in order to avoid doing her irreparable damage.

1.3 In the present decision, the Committee, without taking a position, first summarizes the information and arguments submitted by the parties; it then considers the admissibility and merits of the communication and, lastly, sets out its conclusions.

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

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

The facts as submitted by the author[1]

Before the registration of the communication

2.1 The author is 66 per cent disabled as a result of polyarteritis nodosa, a rare disease that is difficult to treat. She receives a non-contributory disability pension consisting of 14 payments per year of €380.10 each.

2.2 On an unspecified date in 2014, the author, who could not afford a place to live on the private market, began to occupy an apartment that was owned by a bank, although she had no legal title to do so. According to her submission, the property had previously been abandoned.

2.3 On 1 February 2017, the author received a summons to appear before Court of First Instance No. 1 of Guadalajara in eviction proceedings brought by the property owner. The author applied for free legal aid, which she was granted on 2 March 2017. She maintains, however, that she was poorly represented because she was not informed of the trial date or the remedies to which she was entitled, and the Court was not asked to make a judgment of proportionality by weighing her serious health condition and socioeconomic situation against the plaintiff's application for an eviction order.

2.4 On 25 May 2017, the Court ruled in favour of the property owner's application in its entirety, authorizing the eviction of the author and all unidentified persons who were in the building on the grounds that they had no right to occupy it. The author's court-appointed lawyer appealed the ruling, arguing that the evidence had been misinterpreted, as the Court, in reaching its conclusion that the author had not paid for the use of the apartment, had failed to take into account the author's expression of willingness to sign a rental contract with the property owner. On 11 December 2017, the High Court of Guadalajara Province rejected the author's appeal, as it was of the view that, because the payment of rent depended not only on the author's willingness to pay rent but also on the property owner's willingness to enter into a contract for such payment, the evidence had not been misinterpreted.

2.5 On 15 March 2018, the author asked the Office of the Programme for Mortgage Assistance, Advice and Mediation to negotiate with the financial institution that owned the apartment with a view to legalizing her status as a tenant. She also applied for low-income housing.

2.6 On 8 May 2018, Court of First Instance No. 1 of Guadalajara ordered the author, by decree of execution of judgment of 25 May 2017, to vacate the apartment voluntarily within one month or be evicted by officers of the court. The author claims that she then began calling various social service providers, none of which offered a solution for her housing emergency. The author went to the association Plataforma de Afectados por la Hipoteca de Guadalajara, which helped her and provided her with legal aid.

2.7 The author's new lawyer applied for suspension of the eviction proceedings on the grounds that there was no alternative housing for the author under the terms of the cooperation agreement between the General Council of the Judiciary and the regional government of Castilla-La Mancha on the detection of instances of vulnerability in respect of evictions from family housing, social measures and disclosure in eviction and foreclosure proceedings. In accordance with this agreement, the Court was asked to provide information concerning the author's situation to the Office of the Programme for Mortgage Assistance, Advice and Mediation for assessment of the attendant circumstances and appropriate action.

2.8 On 14 June 2018, the Court reported to the Office and postponed the eviction to 11 September 2018.

[1] These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties in their observations and comments on the merits of the communication.

2.9 On 15 August 2018, the author submitted a letter to the Office stating that she had visited the Office on several occasions without having received a reply and asking for information on the actions that had been taken after the transmission of the report from the Court of First Instance. According to the author, the Office, as of the time the communication was registered, had taken no action related to her possible eviction.

After the registration of the communication

2.10 On 5 September 2018, the Department of Social Welfare of Castilla-La Mancha notified Court of First Instance No. 1 of Guadalajara that the necessary steps were being taken in relation to the author and that, at the time, there was no alternative housing for her.

2.11 On 6 September 2018, the Court set a new date, 22 October 2018, for the eviction.

2.12 On 22 October 2018, the author was evicted.

The complaint

3.1 The author recalls that the right to adequate housing is enshrined in article 11 (1) of the Covenant and that it is closely connected to the right not to be subjected to inhuman or degrading treatment and the right to respect for private and family life and the home, enshrined in articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, respectively. The author also points out that, according to the Committee's jurisprudence, carrying out an eviction when no alternative housing is available may be a violation of the Covenant.[2] In addition, that jurisprudence establishes that States parties must pay particular attention to evictions involving persons with disabilities,[3] as in the present case.

3.2 The author also recalls the jurisprudence of the European Court of Human Rights in this regard, which states that, even when the right under domestic law to remain under contract has been exhausted, evictions should be carried out only where alternative accommodation is provided that does not place people in degrading situations, such as homelessness.[4] The European Court has also concluded that a forced eviction is legitimate only when it is the last resort for the pursuit of a legitimate aim in a democratic society and when the necessary measures are taken to avoid infringing on a person's rights.[5]

3.3 The author submits that officials have not held genuine and effective consultations with her or taken the essential steps, to the maximum of available resources, to ensure that she has alternative housing, contrary to the Committee's recommendation in a previous case.[6] She is therefore of the view that this inaction constitutes a violation of article 11 (1) of the Covenant.

State party's observations on admissibility and the merits

4.1 On 5 April 2019, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party maintains that on 1 October 2018, the author was informed of the benefits to which she might be entitled if she met the requirements laid down in the applicable regulation.[7] The author did not reply to this message, however. The State party also maintains that the author twice made appointments with the social service providers of Guadalajara but did not keep those appointments; instead, she appeared only on 5 September, without an appointment, and her appearance did not result in an application for any of the benefits that she had been offered.

[2] *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 15.2.

[3] Ibid.

[4] See European Court of Human Rights, *Buckland v. United Kingdom* (application No. 40060/08), 18 September 2012.

[5] See *Yordanova and Toshev v. Bulgaria* (application No. 5126/05), 2 October 2012.

[6] *Ben Djazia and Bellili v. Spain*, para. 21.

[7] The State party attaches a first notification of 7 September 2018, which was not picked up by the author; a reminder of 27 September 2018, which was received by the author's representative on 1 October 2018, and a second reminder of 15 October 2018, which was also received.

4.3 The State party indicates that the author's new application for suspension of the eviction was rejected by decree of 17 October 2018, as the possibilities offered by the State party's legal system for affording the author the social protection to which she may be entitled had been exhausted. The decree stated that the eviction had already been suspended twice, that a report on the author's situation had been sent to the offices of the Department of Social Welfare of the regional government of Castilla-La Mancha in Guadalajara and Toledo and to the Office of the Programme for Mortgage Assistance, Advice and Mediation, and that the Department of Social Welfare had reported that the appropriate steps were being taken and that there was no alternative accommodation for the author. The eviction took place on 22 October 2018, after the Department of Social Welfare and the social service providers of the municipality confirmed that the author had turned down the offers of alternative accommodation that had been made to her.

4.4 The State party submits that, in this case, the author's tenancy is not protected by article 11 of the Covenant and, therefore, that the return of the building to its owner does not constitute a forced eviction under article 11 of the Covenant or as defined by the Committee in its jurisprudence. Paragraph 3 of general comment No. 7 (1997) on forced evictions states that "the prohibition on forced evictions does not, however, 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". In addition, according to the basic principles and guidelines on development-based evictions and displacement, which were issued by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, those guidelines "apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection".[8] Similarly, Fact Sheet No. 25 (Forced Evictions and Human Rights) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) states that a forced eviction:

> involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State. …
>
> The causes of forced evictions are very diverse. The practice can be carried out in connection with development and infrastructure projects, in particular dams and other energy projects, land acquisition or expropriation, housing or land reclamation measures, prestigious international events … unrestrained land or housing speculation, housing renovation, urban redevelopment or city beautification initiatives, and mass relocation or resettlement programmes.

In addition, paragraph 8 (a) of the Committee's general comment No. 4 (1991) on the right to adequate housing (art. 11 (1) of the Covenant) lists only lawful forms of occupation. "Tenure", it states, "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". Lastly, the fact that general comment No. 7 (1997) makes the assumption that occupation is lawful is made clear in paragraph 11, which states: "Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of 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." The State party is of the view that unlawful occupation is one of the circumstances in which evictions may be justifiable. In addition, it stresses that none of the cases cited involve examples of unlawful occupation. The State party therefore believes that no one has the right to forcibly occupy another's dwelling and notes that the right to own property, enshrined in article 17 of the Universal Declaration of Human Rights, is also a fundamental human right. This right allows property owners to meet their own basic needs in situations of hardship, which is why they must be protected from being arbitrarily deprived of this right. The right to private property is enshrined in article 33 of the Spanish Constitution of 1978. For those reasons, the rights set

[8] A/HRC/4/18, annex I, para. 4.

forth in article 11 (1) of the Covenant may not be used to legitimize the occupation of other people's property.

4.5 Although it is of the view that the case in question does not constitute a forced eviction, the State party, *ad cautelam*, analyses its observance of the procedural protections set out in general comment No. 7 (1997). The first three such protections are: "(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected". Although such procedural protection does not apply to unlawful occupation, the judgment ordering the eviction was handed down in 2017 and the author was not evicted until 22 October 2018. In the interim, the author had the opportunity to plead in court, lodge appeals and communicate with welfare and social service providers. The fourth and fifth procedural protections are: "(d) especially where groups of people are involved, government officials or their representatives are to be present during an eviction and (e) all persons carrying out the eviction are to be properly identified". The State party submits that, in this case, the eviction took place in the presence of court officials, police officers and the representatives of the parties who wished to attend. The sixth protection is for: "(f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise". The eviction record shows that the eviction of the author took place at 11 a.m. The seventh protection is: "(g) provision of legal remedies". In this respect, the State party notes that the author appealed against the decision ordering her eviction. The final protection is: "(h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts". As stated in the decision, the author was assisted by her lawyer.

4.6 The State party maintains that, although the right to adequate housing is enshrined in article 11 (1) of the Covenant, an absolute right to a particular dwelling owned by another person, or an absolute right to be provided with a dwelling by the public authorities if public resources are insufficient, is not. In the State party's view, it is clear that the Covenant, rather than recognizing an enforceable, subjective right, establishes a mandate for States to take appropriate measures to promote public policies aimed at improving access to decent housing for everyone. This point is made clear in general comment No. 7 (1997), in which the Committee states that evictions authorized by the courts should not make anyone homeless and that each State has an obligation to "take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing … is available" (para. 16). Similarly, the Charter of Fundamental Rights of the European Union recognizes the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. The Court of Justice of the European Union has ruled that the right enshrined in the Charter is not to housing but to social and housing assistance within the framework of social policies.[9] This principle has been incorporated into the Spanish Constitution and various statutes of autonomy. The Constitution of Spain, as the Constitutional Court has stated, establishes a mandate or guiding principle that should inform the actions taken by all public authorities in their official capacity. It is the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land for the common good and preventing speculation.[10] Like article 11 (1) of the Covenant, the Constitution thus establishes a right that is to be realized progressively and that is fully protected by Spain in line with its international legal obligations.

4.7 Following this reasoning, the State party takes three parameters into account in fulfilling its obligations: the threshold below which a person lacks the resources to gain access to the housing market; the number of persons below that threshold; and the public funds in the budget available to cover the shortfall. For an individual communication to be admissible under article 11 (1), it will therefore be necessary to show that complainants' lack of the resources needed to gain access to housing puts them in situations of need. These resources must be measured by adding up the monetary income of public and private

[9] The State party refers to order C-539/14 of 16 July 2015, para. 49.

[10] The State party refers to Constitutional Court decisions No. 152/1988 of 20 July, legal bases, para. 2; No. 7/2010 of 27 April; No. 32/2019 of 28 February; No. 59/1995 of 17 March, legal bases, para. 3; and No. 36/2012 of 15 March, legal bases, para. 4.

origin, income in kind and the educational and health services which the household receives free of charge. The estimated minimum for a Spanish family to meet its vital needs, taking into account that health and education are universal public services provided free of charge, is derived from the minimum wage, which is currently €900 and is paid 14 times per year. People in need are also eligible for free legal aid. The State party is, moreover, of the view that an individual communication is inadmissible if the relevant State authorities have devoted resources, to the extent possible, to meeting the housing needs of families genuinely excluded from society and if, in the event that the resources are not sufficient, those resources have been used in a rational and objective manner, addressing first and foremost the situations of those in greatest need. In addition, complainants must not have deliberately committed acts or been responsible for omissions that keep them from receiving the assistance they are offered, in which case their lack of adequate housing is the result of their conduct alone. In conclusion, article 11 (1) of the Covenant may be deemed to have been violated only if the complainants are at risk of social exclusion, if no emergency shelter has been provided and if no housing assignment has been made by the public housing system on the basis of objective criteria.

4.8 In Spain, as a result of the economic crisis, measures have been taken to improve and sustain people's access to the housing market. Tax breaks and rental subsidies have been created to facilitate access to the private housing market. To keep people from exiting the private housing market, a freeze on evictions in cases of non-payment of mortgage instalments has been introduced, and a code of good practices has been adopted which has facilitated the suspension of more than 24,000 evictions, the restructuring of 38,500 debts, the transfer of 7,000 titles in lieu of payment and the award of 9,020 housing units by the Social Housing Fund. Finally, to deal with emergencies caused by legitimate evictions conducted when a new dwelling for the persons in question is not yet available, there are protocols for coordination with municipal social service providers. In addition, under Royal Decree-Law No. 7/2019 of 1 March, a court that orders the eviction of a vulnerable household must inform the corresponding social service agencies and may suspend the eviction for a period of one to three months if those agencies make a determination of vulnerability. Measures have also been taken to promote the maintenance of a sufficient stock of public housing by providing for the free transfer of land in urban planning legislation and by financing the construction of low-income housing.

4.9 This case involves the enforcement of a sentence handed down for unlawful occupation of property, not a forced eviction. The procedural protections that would be required in the event of a forced eviction have nonetheless been provided. In addition, the author has declined to consider the housing options that she has been offered.

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

5.1 On 13 July 2019, the author referred to the arguments that she submitted on 24 October 2019 in relation to the State party's request for the lifting of the interim measures.

5.2 The author submits that on 4 September 2018, she was informed by the Department of Social Welfare that, for the time being, there was no alternative accommodation available to her. On 27 September 2018, following the advice of the social service agency, the author applied for low-income housing. On 19 October 2018, she was notified of the decision by the Court of First Instance to proceed with the eviction, despite the Committee's request for interim measures. She appealed the decision on the same day. On 22 October 2018, however, the eviction took place.

5.3 The author asserts that the eviction constitutes a denial by the State party of the request for interim measures made by the Committee. She adds that the eviction was carried out by dozens of national riot police, who intimidated the people who had gathered in front of the author's apartment to prevent the eviction and dragged them along the ground. Although the crowd and the author's representative sought to ensure that the Committee's decision to request interim measures was respected, dialogue was impossible. The police finally used a hammer to gain entry to the apartment. The author had to be taken to a hospital because the eviction had caused her such great anxiety. She claims that Amnesty International in Spain has publicly denounced the incidents.

5.4 According to the author, on many occasions the public authorities have asserted that the Committee's requests for interim measures are recommendations and are not binding.

The director of the agency responsible for housing in Guadalajara, who was interviewed on a radio programme on the day of the eviction, said that the Committee was of the view that the housing options offered to the victim were satisfactory. Furthermore, the Provincial Director of Social Welfare stated that, as soon as the author's situation was made known, she was offered a place to live, even though she received a message on 4 September 2018 stating that there was no alternative housing available.

5.5 The author comments on the options for housing support that she was offered on 3 October 2018. The first option was a social emergency subsidy; according to the author, this form of support is incompatible with her status as the recipient of a disability pension. The second option was temporary accommodation that is made available in social emergencies; in the author's region, this accommodation is in shelters for the destitute and is, of course, temporary, meaning that, given her health, it did not meet her needs. The third option was a supplement for non-contributory pensioners residing in rented dwellings; this option is not available to the author, as it can be requested only if a rental contract is already in place, which the author would not be able to obtain in the current market.

5.6 The author stresses that the State party has provided no evidence of its claim that she missed two appointments with social service providers. The author maintains that she has visited social service providers on numerous occasions, applying for assistance to no avail whatsoever, and that, after endless administrative procedures, she has received nothing but the aforementioned offers, which, in her view, do not constitute adequate alternative housing.

5.7 The author concludes by asserting that the State party has violated the interim measures requested by the Committee, that she has not been offered alternative housing and that she is currently under the protection of family and friends, without stable, decent housing.

B. Consideration of admissibility and the interim measures

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 acknowledges the State party's argument that this case does not concern a tenancy protected by article 11 of the Covenant or a forced eviction under the terms of that article or the Committee's jurisprudence and that this complaint therefore falls outside the Committee's sphere of competence (see para. 4.4 above). The Committee recalls that, as it stated in paragraph 11 of its general comment No. 7 (1997), which sets forth an authoritative interpretation of the Covenant, even when evictions are justified, as in the case of persistent non-payment of rent or damage to rented property without any reasonable cause, it is still "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, as such a form of occupation may become, for some people, a means of securing housing in which to establish and carry on their private and family life, and could thus be protected within the ambit of the right to housing. Thus, while the lack of legal title may justify an eviction, the procedures leading up to an eviction order or the execution of the eviction itself must nonetheless be carried out in a manner that is compatible with the Covenant and that ensures that the persons affected have access to appropriate legal remedies. The Committee notes the State party's observation that paragraph 3 of general comment No. 7 (1997) states that "the prohibition on forced evictions does not, however, 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 also notes that the author does not argue that her eviction was carried out in violation of domestic law. Rather, her complaint is that the eviction was not carried out in conformity with the provisions of the Covenant, as required under the second part of the above-quoted sentence from the general comment. 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 Further to article 3 (2) (e) of the Optional Protocol, the Committee will declare inadmissible any communication that is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media. The Committee notes that the author began occupying an apartment without legal title in 2014 and was evicted, after several suspensions, on 22 October 2018. The author applied for low-income housing on 27 September 2018, but the documentation that has been provided does not show that she had applied for such housing before occupying the apartment or receiving the eviction order. According to statements made by the State party, which have not been contested by the author, she was informed, after her communication had been registered with the Committee, of the benefits to which she might be entitled. The author claims that she was ineligible for these benefits or that they were not right for her, but she did not respond to the State party on this point. The Committee also notes that, according to the author, she has been under the protection of family and friends since the eviction and is without stable, decent housing. However, the author provides no further details; in particular, she does not provide a specific account of how she has been housed since the date of her eviction.

6.4 The author has also failed to provide documentation showing that, as a result of the eviction, she has been deprived of her right to adequate housing – for example, by having been made homeless or finding herself in a dwelling that does not meet the minimum requirements for housing suited to her needs. Although she states that she is under the protection of family and friends, she has provided no evidence in this regard, not even a detailed account of these circumstances. The Committee acknowledges that the author is particularly vulnerable as a result of her disability and her low income, and understands that communications are sometimes submitted by persons who are not represented by lawyers or jurists trained in international human rights law. The Committee must therefore, in accordance with the victim-centred approach, refrain from imposing any unnecessary formalities in order to avoid creating obstacles to the submission of communications for its consideration. For the Committee to consider the merits of a communication, however, the facts of the case and the claims it makes must show, at least prima facie, that the authors may be actual or potential victims of a violation of a right enshrined in the Covenant.[11] In this case, the Committee notes that while the author is represented by counsel, both in domestic proceedings and before the Committee, she has not explained or indicated how her right to adequate housing has been violated by the eviction and has not shown any interest in taking part in the consultations in which the State party sought to engage her after her communication was registered. Consequently, as it does not have sufficient evidence before it to determine that, in this case, the author's right to adequate housing has been violated or that this right is actually threatened, the Committee finds that, in respect of the claim of a violation of article 11 of the Covenant, the communication is insufficiently substantiated for purposes of admissibility and that it is inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

Interim measures and eviction of the author

7.1 The Committee notes that, on 5 September 2018, in the course of its consideration of this communication, it asked the State party to suspend the eviction of the author while the communication was being considered or to provide her with adequate housing in genuine consultation with her in order to avoid doing her irreparable damage. By note verbale of 19 October 2018, the State party asked that the request for interim measures be withdrawn, primarily on the grounds that the author had not taken part in the authorities' attempts to enter into a dialogue with her. The author was evicted on 22 October 2018, which was before the deadline for her to submit her observations on the State party's request for the lifting of the interim measures and for the Committee to decide on the request.

7.2 The Committee may decide to request interim measures when an action taken or about to be taken by the State party would appear likely to cause irreparable harm to the

[11] *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.15.

author or the victim unless withdrawn or suspended pending full consideration of the communication by the Committee.[12]

7.3 Article 5 (1) of the Optional Protocol provides that "At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations". In line with the practice of other international human rights bodies, the Committee regards "exceptional circumstances" as referring to the serious impact that an act or omission by the State party may have on a protected right or on the future effectiveness of any decision by the Committee on a communication submitted for its consideration. In this context, "irreparable damage" refers to the threat or risk of a rights violation that is of such a nature as to be irreparable or not adequately compensable or to forestall the possibility of restoring the rights that have been violated. Moreover, in order to warrant a request for interim measures, the risk or threat must be real, and there must be no effective domestic remedies available that could prevent such irreparable damage. If the Committee does not request interim measures because no real risk has yet been found to exist at the time of the author's initial request for such measures, the author may resubmit a request for interim measures to the Committee at a later date, should the risk actually arise. Furthermore, as interim measures are not a stand-alone mechanism, but are connected with an individual communication, the Committee cannot request interim measures unless the individual communication concerned appears prima facie to be admissible and implies, on its face, that there may have been a violation of the Covenant. This also means that, in principle, there must be an absence of domestic remedies that are both effective and available to the author.

7.4 While the risk of irreparable damage must be real, the Committee is of the view that the likelihood of the damage's actually occurring need not be proved beyond a reasonable doubt, as such a requirement would be incompatible with the objective of interim measures, which is to prevent irreparable damage, even in the absence of complete certainty that the damage will otherwise occur. Rather, the information provided by the author must enable the Committee to determine prima facie that there is a real risk of irreparable damage and that the communication is admissible. At the same time, it is the author who bears the responsibility to provide the Committee with enough information on the relevant facts and alleged violations to establish a prima facie case and the existence of a risk of irreparable damage. Such information must include, where available, documentary evidence such as copies of the relevant decisions of national authorities or relevant reports on the situation in the country that help to substantiate the claim that there is an imminent risk of irreparable damage. In those cases, in which the information provided by the author is insufficient but the risk of irreparable damage nonetheless cannot be ruled out, the Committee may request interim measures for a limited time in order to allow the author a short but reasonable period in which to provide the missing information. In such cases, if the information is not provided, the request for interim measures is withdrawn automatically.

7.5 In eviction cases, each allegation of irreparable damage is considered individually, and such consideration is separate from the consideration of whether there has been a violation of the Covenant. In general, eviction is considered to create a risk of irreparable damage and a basis for requesting interim measures only when the evicted persons do not have access to adequate alternative housing. Another pertinent factor to be considered in assessing the risk of irreparable damage is the situation of the family concerned. For example, poor families and families that include small children or persons with disabilities and specific needs are particularly at risk, given that even a short period without adequate housing as a result of eviction could have irreversible consequences.

7.6 The adoption of interim measures pursuant to article 5 of the Optional Protocol is vital to the Committee's performance of the role entrusted to it under the Protocol.[13] The reason for the existence of interim measures is, inter alia, to preserve the integrity of the

[12] Human Rights Committee, general comment No. 33 (2008) on obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 19.

[13] Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 6.1.

process, thereby ensuring the effectiveness of the mechanism for protecting Covenant rights when there is a risk of irreparable damage.[14]

7.7 The Committee observes that any State party that has accepted the obligations imposed by the Optional Protocol recognizes the competence of the Committee to receive and consider individual communications from persons who claim to be victims of violations of the Covenant. By accepting these obligations, States parties have undertaken to cooperate with the Committee in good faith by providing it with the means to consider the complaints submitted to it and, after such consideration, to transmit its comments to the State party and the complainant.[15] Any State party that does not adopt interim measures fails to fulfil its obligation to respect in good faith the procedure for individual communications established in the Optional Protocol.[16] It also deprives the Committee of the ability to provide an effective remedy to persons who claim to be victims of a violation of the Covenant. Under rule 7 (3) of the provisional rules of procedure under the Optional Protocol,[17] the State party may present arguments on why the request for interim measures should be lifted or is no longer justified. Rule 7 (4) states that the Committee may decide to withdraw a request for interim measures on the basis of submissions received from both parties. Therefore, when a State party requests the lifting of interim measures, it cannot, in good faith, disregard those measures before the Committee has had an opportunity to decide on the request.

7.8 In this case, the State party evicted the author, without providing her with adequate alternative housing, before the Committee could decide on the State party's request to lift the interim measures. By failing to honour the request for interim measures, the State party failed to comply with its obligations under article 5 of the Optional Protocol and made it unlikely that the future decision or Views would provide effective protection, thus depriving the individual communications procedure of its raison d'être.[18] In the absence of any other explanation by the State party for its failure to honour the request for interim measures, the Committee finds that the facts, as reported, show that the State party is in breach of article 5 of the Optional Protocol.

7.9 The Committee recalls that, under article 5 (2) of the Optional Protocol, a request for interim measures "does not imply a determination on admissibility or on the merits of the communication". The Committee may therefore find that the initial communication is sufficiently substantiated to be registered and that it indicates that the situation warrants a request for interim measures in order to avoid irreparable damage. There is nothing, however, to prevent the Committee, after further consideration on the basis of new information provided by the State party, from concluding that the interim measures were unjustified or are no longer necessary. Similarly, the information provided by the parties on the admissibility and merits of the communication may even lead the Committee to conclude that the communication, which initially appeared admissible prima facie, is inadmissible for want of sufficient substantiation, as was the case here. It is therefore not contradictory for the Committee to request interim measures and then declare the communication inadmissible. For this very reason, in accordance with rule 7 of the provisional rules of procedure under the Optional Protocol, a State may oppose a request for interim measures and ask that it be lifted, in which case it will provide the Committee with arguments as to why the interim measures are unjustified and why there is no risk of irreparable damage. In addition, the State party may submit arguments for finding a communication inadmissible. In the present case, the State party, instead of failing to comply with the Committee's request for interim measures within days of sending its own

[14] See, *mutatis mutandis*, European Court of Human Rights (Grand Chamber), *Mamatkulov and Askarov v. Turkey* (applications Nos. 46827/99 and 46951/99), judgment of 5 February 2005, para. 128 ("Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34"); and Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia*, para. 6.1.

[15] Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia*, para. 6.3.

[16] Human Rights Committee, general comment No. 33 (2008), para. 19.

[17] E/C.12/49/3.

[18] Committee against Torture, *Subakaran R. Thirugnanasampanthar v. Australia*, para. 6.3.

request for the lifting thereof – and despite having been informed that the Committee would make a decision on the request after receiving the author's comments on it – could thus have waited in good faith for the Committee to respond to the State party's call for the withdrawal of the Committee's request for interim measures.

C. Conclusion and recommendation

8. Taking into consideration all the information made available to it, the Committee, acting under the Optional Protocol, is of the view that the communication is inadmissible under article 3 (2) (e) of the Optional Protocol.

9. The Committee also finds that the State party has violated article 5 of the Optional Protocol.

10. In the light of the present decision, and as the Committee has found no violation of the complainant's rights, the Committee will simply make a general recommendation to the State party in a bid to prevent future violations of article 5 of the Optional Protocol. The Committee recommends that, to ensure the integrity of the procedure, the State party develop a protocol for honouring the Committee's requests for interim measures and that it inform all relevant authorities of the need to honour such requests.

11. 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 a written response to the Committee within six months that includes information on the measures it has taken in follow-up to the Committee's decision and recommendations. The State party is also requested to publish the decision of the Committee and to distribute it widely, in an accessible format, so that it reaches all sectors of the population.