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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 communications No. 226/2021 and No. 227/2021* **

<i>Communications submitted by:</i>	Hamid Saydawi and Masir Farah (both represented by counsel, Stefano Portelli)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Italy
<i>Dates of communications:</i>	10 and 12 September 2021 (initial submissions from Mr. Saydawi and Mr. Farah, respectively)
<i>Date of adoption of Views:</i>	16 February 2024
<i>Subject matter:</i>	Eviction of two families from a dwelling that they were occupying without legal title
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 (1) and 5

1.1 The authors of the communications, both nationals of Morocco, are Hamid Saydawi, born on 4 April 1963, and Masir Farah, born on 10 October 1975. They claim to be victims of a violation by the State party of their rights under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 20 February 2015. The authors are represented by counsel.

1.2 On 10 and 12 September 2021, the Committee, acting through its working group on communications, registered the communications and asked the State party to suspend the eviction of the authors and their families while the communications were pending before the Committee or to provide them with alternative housing suited to their needs in order to avoid causing irreparable harm to them and their families.

* Adopted by the Committee at its seventy-fifth session (12 February–1 March 2024).

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



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

Facts as submitted by the authors

General facts common to the cases

2.1 The authors claim that they were living in a block of five small, “neglected” houses close to the railway line at 37 via Latino Silvio, Rome. They contend that the houses were built by the United States Army during the Second World War and that, in the decade between the death of the previous occupants and their arrival, the houses were used by drug smugglers and users. The houses were restored and renovated by the authors and their neighbours, a group of five families of North African migrant workers. The authors note that they had a considerable emotional attachment to the houses and invested a great deal of work and money in the renovation works. The 24 neighbours, including 7 minors, were very close and supported one another.

2.2 Although most of the occupants had registered the houses as their place of residence, they never managed to obtain a property title. According to the information available to the residents, the houses had no formal owner, and the local authorities informally told them that they could remain in the houses even if it was impossible to provide them with a formal title. The authors contend that the authorities had informally expressed appreciation for the fact that the renovation of the houses had restored security to the area.

2.3 On 14 October 2008, the authors received a notification from the Italian State railway company (Gruppo Ferrovie dello Stato Italiane) informing them that the company had acquired ownership of the block of houses and would evict the inhabitants, claiming that the houses were in a ruinous state. At a trial before the Civil Court of Rome, which began on 27 October 2008, the company requested the eviction of the families and the payment of a fine for the illegal occupation of the houses. On 22 September 2009, the complaint was dismissed and archived by the Civil Court of Rome, which noted that the authors had been living in the houses for a long time before the company had acquired ownership of them and that the authors had not committed any criminal offence.

2.4 In 2010, an inspection by firefighters concluded that the houses were in a state of disrepair and that the residents had to be evicted. The inspectors requested the City Council of Rome to provide the families with suitable housing. That request was reportedly forwarded to social services on 14 April 2011, without any result.

2.5 On 5 April 2011, the authors responded to another notice to vacate from the railway company, arguing that the houses were in a good state and that they had been inhabited for many years, while highlighting that the company had tolerated the use of the houses without requesting any fee or showing any intention of renting them out or using them in any way. On 25 November 2012, the seventh section of the Civil Court of Rome issued a judgment in which it ordered the vacation of the houses and imposed on the residents the obligation to pay a fine and cover legal costs amounting to €37,493.74. However, in the following years, the authors received no further notice to vacate and were not offered any alternative housing. They thus decided to continue residing in the houses and resumed the renovation works.

2.6 On 10 February 2021, the authors were officially notified that they had to vacate the houses, in implementation of the decision taken by the Civil Court of Rome on 25 November 2012. On 16 February 2021, the authors requested emergency housing from the City Council. A firm eviction order was pronounced on 15 March 2021 by the Civil Court of Rome, but the authors’ counsel decided not to challenge it, since an appeal against a firm sentence, in the absence of new evidence, would certainly have been rejected and would condemn the authors to the payment of further legal costs.

2.7 On 24 May, 27 June and 27 July 2021, judicial officers tried to visit the houses to carry out the eviction, but they were unable to do so, given the support provided to the authors by housing activists and the other families. During the last of the three visits, a judicial officer communicated orally that the next visit would take place on 16 September 2021 but did not provide any written document to that effect.

Communication No. 226/2021

2.8 Mr. Saydawi arrived in Italy in 1988 and has been living in a house located at 37 via Latino Silvio with his wife and three children since 2000. He was earning approximately €1,778 per month prior to the lockdown imposed during the coronavirus disease (COVID-19) pandemic, but his full-time employment was replaced with an arrangement of occasional collaboration with his former employer following a pandemic-related restructuring, which resulted in a drop in income of about half. Mr. Saydawi estimates that he spent approximately €25,000 on the first stage of the renovation of the houses, in addition to the manual work that he undertook informally.

2.9 On 23 March 2011, Mr. Saydawi's counsel wrote a letter to the railway company on behalf of his client's family and two other families, informing it that they would be open to regularizing their housing situation by becoming formal tenants. In addition to the requests for social housing mentioned above, Mr. Saydawi filed another request for public housing with the Housing Department of the City Council of Rome on 9 June 2011. His request for emergency housing of 16 February 2021 was denied on 24 February 2021, and the City Council of Rome gave him the phone number of an organization that provides support to persons in a situation of homelessness. On 18 June 2021, Mr. Saydawi requested another meeting with social services with a view to obtaining social housing. Mr. Saydawi's children are adults and are economically independent, but, owing to the economic crisis caused by the COVID-19 pandemic, they are unable to help their parents financially. Consequently, he and his wife would have no alternative housing if they were to be evicted from the house and would become homeless. The only alternative offered by the authorities was to separate the men and the women, with the women housed in emergency centres and the men remaining homeless, which they did not consider to be a viable option.

Communication No. 227/2021

2.10 Mr. Farah has been living in a house located at 37 via Latino Silvio since 2005. At the time of the submission of the communication, he was living in the house with his 73-year-old mother, who has disabilities, his older brother, who had recently undergone heart surgery, his wife and his two children then aged 8 and 5 years. Mr. Farah has been working as a fishmonger in a market in Rome for the past 13 years. Even though his mother requested a pension, and his wife is the formal title holder of the market stall at which he works, at the time of the submission of the communication, he was the only person in the family with an income. His brother had previously sold shoes at markets but had lost his economic activity after being hospitalized and undergoing heart surgery. The economic indicator of the family unit is €2,350 per year.

2.11 Despite the requests for emergency housing filed on 16 February 2021 (see para. 2.6 above), neither the authorities nor the railway company offered any solution. The only alternative that the authorities offered was to separate the men from the women and children, with the women and children being housed in emergency centres and the men remaining homeless, which they did not consider to be a viable option. Mr. Farah cannot seek shelter at the home of any relatives or friends and fears that an eviction and the resulting homelessness would render him unable to provide proper parental care to his children. He adds that an eviction would cause irreparable damage to the whole family, putting the life of his mother and the health of his brother at risk and creating trauma for the children, whose enjoyment of the basic rights to housing, health, schooling and parental care would be disrupted.

Complaint

3.1 The authors allege that the Italian authorities are not protecting their rights under article 11 of the Covenant and contend that the situation of defencelessness in which they find themselves is a violation of their rights enshrined in the Covenant. They note that the national courts ruled in favour of a claim by the railway company to regain control of a property that it had neglected for many years instead of guaranteeing the right to housing, integrity and dignity to socially vulnerable families.

3.2 The authors add that the uncertain housing situation that they endured for 16 years, the risk of the separation of the family in emergency shelters and the threat of eviction amount to a violation of article 17 of the International Covenant on Civil and Political Rights.

3.3 The authors claim that they have exhausted domestic remedies, as they appealed the various judicial decisions against them, with the exception of the decision of 15 March 2021, as it was deemed that an appeal against a firm sentence in the absence of any new evidence would certainly have been rejected and would have made them liable for further legal costs. They note that they have requested social housing on several occasions and that there are no other domestic remedies that they can pursue to stop their eviction.

State party's observations on admissibility and the merits

General remarks and comments on admissibility common to the cases

4.1 On 15 March 2022, the State party submitted its observations on the admissibility and merits of the communications.

4.2 The State party notes that the Constitutional Court deals only with infringements of the 1948 Constitution and can act either *ex officio*, through a prosecutor, or upon request from the plaintiff or defendant. It adds that, when the Court considers that an act is unconstitutional, such evaluation leads to a suspension of the *a quo* proceeding. The State party mentions that, pursuant to article 134 of the Constitution, the Constitutional Court decides on disputes concerning: (a) the constitutionality of laws and acts with the force of law adopted by the State or the regions; (b) the allocation of powers among branches of government, within the State, between the State and the regions and among the regions; and (c) charges brought against the Head of State in accordance with the Constitution. The State party notes that, more generally, the Constitutional Court decides on the validity of legislation, its interpretation and the question of whether its implementation, in form and substance, is in line with the Constitution. It also notes that, when the Court declares a law or an act with the force of law to be unconstitutional, the norm loses force the day after the publication of the decision.

4.3 Regarding the admissibility of the communications, the State party contends that the authors have failed to exhaust domestic remedies, noting that remedies must be available, effective and sufficient or adequate. The State party emphasizes that the rule regarding the non-exhaustion of domestic remedies becomes relevant when such remedies are unavailable, when they lack effectiveness or adequacy and when there is a denial of justice or the remedies that apply are discretionary. The State party argues that, contrary to the claims made in the communications, none of the above applies in the present cases.¹

Communication No. 226/2021

4.4 Regarding the communication submitted by Mr. Saydawi, the State party contends that, during a meeting of the Provincial Committee on Order and Public Safety of

¹ The State party refers to Silvia D'Ascoli and Kathrin Maria Scheer, "The rule of prior exhaustion of local remedies in the international law doctrine and its application in the specific context of human rights protection", EUI Working Paper LAW, No. 2007/2 (European University Institute, 2007), p. 13; and Martin Dietrich Brauch, "Exhaustion of local remedies in international investment law", *IISD Best Practices Series* (International Institute for Sustainable Development, January 2017). The State party notes that the origins of the rule regarding the exhaustion of local remedies lie in the context of customary international law, following the logic that, "before a state may exercise diplomatic protection, the foreign national must have sought redress in the host state's domestic legal system" (Andrew Newcombe and Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (Alphen aan den Rijn, Kluwer Law International, 2009), p. 6). In addition, the State party refers to Cesare P.R. Romano, "The rule of prior exhaustion of domestic remedies: theory and practice in international human rights procedures", in *International Courts and the Development of International Law*, Nerina Boschiero and others, eds. (The Hague, T.M.C. Asser Press, 2013); Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, Clarendon Press, 1989); and Roberto Ago, "La regola del previo esaurimento dei ricorsi interni in tema di responsabilità internazionale", *Archivio di diritto pubblico* (Padua, CEDAM), vol. 3, No. 2 (May–August 1938).

17 September 2021, it emerged that, following an assessment, Mr. Saydawi's family, living in unit No. 1 of the block of houses at 37 via Silvio Latino, had been found to have an annual income of €60,000. The State party argues that, for the reasons mentioned above, both in its general remarks and in its comments on admissibility and the merits, the communication is not admissible.

Communication No. 227/2021

4.5 With regard to the communication submitted by Mr. Farah, the State party reports that, in the past, the emergency social service of the Municipality of Rome, the Sala Operativa Sociale, proposed emergency solutions to the persons living at 37 via Silvio Latino and that all proposals were refused by Mr. Farah because they were only temporary. The State party notes that, during the COVID-19 pandemic, among other relevant measures, an emergency income scheme was activated, and Italy introduced so-called citizenship income, as was acknowledged in the context of the universal periodic review in November 2019.² The State party highlights the fact that, among other measures, it introduced the single and universal allowance to provide economic support to families. The allowance is allocated for each dependent child below the age of 21 if certain conditions are met and without age limits for children with disabilities. The State party argues that, for the reasons mentioned in the general remarks above, as well as in its comments on admissibility and the merits, the communication is groundless and thus not admissible.

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

General remarks and comments on admissibility common to the cases

5.1 On 21 April 2023 and 12 June 2022, the authors submitted comments on the State party's observations on the admissibility and merits of cases No. 226/2021 and No. 227/2021, respectively.

5.2 The authors reject the claim that the communications are inadmissible for non-exhaustion of domestic remedies, contend that the State party is acting in bad faith and consider that the Interministerial Committee for Human Rights, which prepared the State party's observations, is not the appropriate body to provide such observations, as it is not independent from the executive branch.

5.3 The authors highlight that the domestic remedies that complainants have to exhaust must be available and effective, and the specific circumstances of each individual case must be taken into account when determining whether they have been exhausted.³ They contend that the application of the requirement to have exhausted domestic remedies is subject to a degree of flexibility and should not constitute an unjustified impediment to access to international remedies.

5.4 The authors also contend that, in common with the great majority of vulnerable people who are threatened with eviction in the State party, they did not lodge an appeal against their eviction. They further contend that they decided not to lodge an appeal because of a legislative reform that made appeals extremely expensive and not eligible for funding under the free justice system, thus rendering them virtually inaccessible for people with scarce economic resources who are already indebted. The authors argue that, through Decree No. 55 of 10 March 2014, the Ministry of Justice of Italy introduced new parameters for the calculation of the legal costs to be borne by unsuccessful parties in civil trials. Those parameters, which were later modified by decree on 8 March 2018, are based on the costs of the trial itself, and the costs ultimately awarded may be raised or lowered according to the judge's decision. However, in accordance with an order of the Supreme Court of Cassation,⁴ unless there are clear reasons, the costs cannot differ significantly from the professional fees set by the order of lawyers. The authors contend that to be condemned to the payment of legal

² See [A/HRC/43/4](https://www.ohchr.org/en/hr-bodies/upr/it-index). The other documents considered during the review are available at <https://www.ohchr.org/en/hr-bodies/upr/it-index>.

³ International Justice Resource Center, "Exhaustion of domestic remedies in the United Nations system" (2017).

⁴ Supreme Court of Cassation, Decision No. 8146 of 23 April 2020.

costs represents a heavy burden for individuals, as those who have suffered a violation of their right to housing are generally in a financially weakened position by the time that they come before a court, and the condemnation to pay legal costs always represents a heavy burden. The authors note that the reform applies even to people who have the right to free legal assistance. They highlight that, in practice, the risk of being condemned to pay amounts that could easily reach €5,000 leads people with limited economic resources, who are often already indebted to their landlords, to renounce their right to legal defence, and most lawyers recommend against lodging appeals that have no chance of success in order to avoid incurring additional costs.

5.5 The authors argue that, if the State party objects to the admissibility of a communication on the basis that domestic remedies have not been exhausted, it bears the burden of proving that remedies exist that are available and effective. They note, however, that the State party has already submitted the same observations in response to other individual communications. The authors note that the State party's submission contains generic references to the Italian judicial system but no statement of which specific domestic remedy they could have used.

5.6 The authors note that the State party refers to the Constitutional Court, which might imply that an application to that judicial body is the domestic remedy that they should have used. They contend, however, that only judges can file an application for a remedy with that Court, which has the role of checking the validity of laws and acts, regulating the allocation of powers among the different branches of government and acting as an arbiter of charges brought against the President. The authors add that the role of the Constitutional Court is not to respond to claims submitted by individuals.⁵ They claim that it is thus not possible for individuals, such as themselves, to commence proceedings before that Court. The authors argue that the State party is fully aware of the above-mentioned arguments, as well as of the lack of resources that they have as persons in a vulnerable economic situation who are excluded from access to affordable housing and subject to the threat of irreparable harm and a potential violation of their rights. The authors thus contend that it is not reasonable to expect them to commence proceedings before the highest judicial organ of the State, an action that would require intermediation by a judge, which they are unable to obtain. The authors argue that the State party's argument is inconsistent with the obligation of the State party to interpret the Covenant in good faith, in accordance with article 26 of the Vienna Convention on the Law of Treaties.

5.7 The authors allege that they have exhausted all domestic remedies of which they could reasonably have availed themselves. They highlight the dire housing shortage in the State party and note that the European Union expressed concern about housing rights and evictions in the State party in a report of 2015. The authors contend that the situation has worsened in subsequent years and has become endemic as a result of the COVID-19 pandemic and the measures taken by the State party in that context.

Communication No. 226/2021

5.8 In his comments, Mr. Saydawi notes that the claim that he earns €60,000 annually is incorrect. He explains that his employment with the cultural association of Moroccan imams in Europe was replaced with a precarious relationship of "working on call" approximately two years ago, as a result of which he earns around one third of his previous salary. He notes that he currently has an indicator of equivalent economic situation of slightly more than €10,000 annually, which does not allow him to rent a house on the free market or to access

⁵ The authors refer to the public website of the Constitutional Court, which states that the Constituent Assembly made a fundamental choice regarding the general system of oversight of the constitutional validity of laws, excluding the possibility of their being directly challenged before the Court by any individual and providing instead that doubts about the constitutional validity of laws can be raised only upon their application by common judges, and that, therefore, there are as many ways to access the Court as there are common judges, of all levels. See https://cortecostituzionale.it/jsp/consulta/istituzioni/lacorte_presentazioni.do.

temporary housing.⁶ Mr. Saydawi claims that the assertion that he earns €60,000 annually is further proof of bad faith, as the social worker from the Interministerial Committee for Human Rights with whom he was requested to meet transmitted incorrect information instead of solving his problem, in an attempt to discharge the State party of its obligations towards the most vulnerable in society.

Communication No. 227/2021

5.9 Referring to the State party's comments on the merits, Mr. Farah contends that the mention of the extraordinary and non-extraordinary subsidies provided to his family is not relevant. He notes that he is a working person who is unable to support a family of six and pay rent on only one income. He points out that the subsidies referred to by the State party do not provide valid or permanent solutions to prevent harm in case of an eviction. He specifies that the COVID-19 emergency income expired in December 2020 and was not available when the communication was submitted in September 2021. He notes that, to request citizenship income, he would be required to stop working. He argues that, while the single and universal allowance, which has recently been established by the Government and includes a subsidy of €175 for each child, will certainly have a positive impact on the family's finances, it will not avert the risk of forced eviction for his family. Mr. Farah contends that temporary, emergency-related solutions such as those mentioned in the State party's response do not guarantee respect for article 11 of the Covenant, since they all entail the separation of the family and offer no permanent remedy in view of the risk of irreparable harm.

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 the rules of procedure under the Optional Protocol, whether the communication is admissible.

6.2 The Committee is competent, *ratione materiae*, to consider allegations of a violation of any of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore declares the authors' claims under article 17 of the International Covenant on Civil and Political Rights incompatible with the provisions of the Covenant pursuant to article 3 (2) (d) of the Optional Protocol.⁷

6.3 The Committee recalls that article 3 (1) of the Optional Protocol precludes it from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee takes note of the State party's argument that the principle of exhaustion of domestic remedies has not been respected in the individual communications under examination (see para. 4.3 above). The Committee also takes note of the authors' contention that the domestic remedies must be available and effective and of the claim that, if a State party objects to the admissibility of a communication on the basis that domestic remedies have not been exhausted, it bears the burden of proving that remedies exist that are available and effective.

6.4 The Committee further takes note of the authors' uncontested allegation that an appeal against the firm sentence and eviction order of 15 March 2021 had no prospect of success given the need to present new evidence and that such an appeal would impose on them an undue financial burden in view of the need to cover the legal costs (see paras. 2.6 and 3.3 above). The Committee observes that the State party refers in general terms to the existence of the Constitutional Court and to the fact that the principle of exhaustion of domestic remedies has not been respected. The State party fails to identify, however, what remedies would have been effective and accessible in the present cases, in particular in the light of the authors' argument that the remedy of constitutional challenge is inaccessible to individuals. The Committee recalls its previous jurisprudence, according to which a State party raising an objection of admissibility on the ground of non-exhaustion of domestic remedies must prove

⁶ Mr. Saydawi submits an official document purportedly showing an indicator of equivalent economic situation of €10,726.63.

⁷ For example, *V.T.F. and A.F.L. v. Spain* (E/C.12/56/D/6/2015), para. 4.2.

that the author of the communication has not exhausted available and effective remedies capable of redressing the alleged violation.⁸ The Committee considers that, if a State party argues for inadmissibility on the ground of non-exhaustion of local remedies, it must identify which remedies should have been exhausted, showing that they are appropriate and effective,⁹ which it has failed to do in the present cases. The Committee thus considers that article 3 (1) of the Optional Protocol is not an obstacle to the admissibility of the present communications.

6.5 The Committee notes that the communications meet the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communications admissible and proceeds with its consideration of the merits.

C. Committee's consideration of the merits

Facts and legal issues

7.1 The Committee has considered the present communications, 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 will proceed to consider which facts it deems to be established and relevant to the complaints.

7.3 At the time of the submission of the communications, the authors had been living in two houses with their families, Mr. Farah for 16 years and Mr. Saydawi for 20 years, without legal title. They had renovated the houses and registered them as their place of residence. The State party authorities were aware of the authors' presence in and renovation of the houses, which they condoned.

7.4 Following the acquisition of the houses by the Italian State railway company in 2008, judicial proceedings were initiated to request the eviction of the occupants and, on 25 November 2012, the authors were ordered by a civil court to vacate the houses and pay a fine. However, it was not until 15 March 2021 that a firm eviction order was pronounced against the authors.

7.5 The authors do not have the financial means to find adequate alternative housing on the private market. They requested social housing in 2021, and the authorities have been aware of their need for alternative housing since 2011. The only alternative offered by the State party consisted of temporary emergency shelter, which would have led to a separation of each family, through a separation of the men from the women.

7.6 The authors claim that evicting them and their families without alternative and adequate accommodation would amount to a violation of their right to adequate housing under article 11 (1) of the Covenant.

7.7 In the light of the Committee's determination of the relevant facts and the parties' submissions, the issue raised by the communications is whether the judicial decision to evict the authors and their families without making provision for a consultation on and review of housing alternatives and, in the final instance, ensuring that the authors had alternative accommodation when the eviction was ordered was a violation of the right to adequate housing enshrined in article 11 (1) of the Covenant. To make that determination, the Committee will begin by returning to its jurisprudence on protection against forced eviction. It will then consider the question of the eviction of the authors and their families and address the issues raised in the communications.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right of central importance for the enjoyment of all economic, social and cultural rights and of other, civil and political

⁸ *Ziablitsev v. France* (E/C.12/71/D/176/2020), para. 6.6.

⁹ *I.D.G. v. Spain* (E/C.12/55/D/2/2014), para. 9.5.

rights.¹⁰ The right to housing should be ensured to all persons irrespective of income or access to economic resources,¹¹ and States parties should take whatever steps are necessary for that purpose, to the maximum of their available resources.¹²

8.2 Forced evictions are prima facie incompatible with the Covenant and can be justified only in the most exceptional circumstances.¹³ 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 of the proportionality of the legitimate objective of the eviction to its consequences for the evicted persons.¹⁴ That obligation flows from the interpretation of the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.¹⁵

8.3 For an eviction to be justifiable, it must thus meet a number of requirements as provided for in article 4. First, the limitation of the right to adequate housing must be determined by law. Second, it must promote general welfare in a democratic society. Third, it must be suited to the legitimate purpose cited. Fourth, the limitation must be necessary, in the sense that, if various means of achieving the goal pursued could reasonably be expected to succeed, the one that interferes least with the right must be used. Lastly, the benefits of the limitation in promoting general welfare must outweigh the impact on the enjoyment of the right being limited. The more serious the impact on the right enshrined in the Covenant, the greater the scrutiny that must be given to the grounds invoked for such a limitation.¹⁶ The availability of adequate alternative housing, the personal circumstances of the occupants and their dependants and their cooperation with the authorities in seeking suitable solutions are crucial factors in such an analysis. Moreover, a distinction inevitably needs to be made between evictions from properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.¹⁷ The State party will therefore 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 is to be carried out.¹⁸ The assessment of the proportionality of the measure must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. The authority must ascertain whether the eviction is compatible with the Covenant, including with regard to the elements of the proportionality test required by article 4 of the Covenant, as described above.¹⁹ However, the principles of reasonableness and proportionality might make it necessary to stay or postpone the eviction order so as to avoid subjecting the evicted persons to destitution or violations of other rights enshrined in the Covenant. An eviction order may also depend on other factors, such as an obligation for the administrative authorities to step in to help the occupants with a view to mitigating the consequences of the eviction.²⁰

8.4 In addition, there must not be alternative measures or measures that involve less interference with the right to housing, and the persons concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.²¹

¹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 1.

¹¹ *Ibid.*, para. 7.

¹² *Ibid.*, para. 12.

¹³ *Ibid.*, para. 18; and Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 1.

¹⁴ For example, *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 13.4; and *Vázquez Guerreiro et al. v. Spain* (E/C.12/74/D/70/2018), para. 8.2.

¹⁵ For example, *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4; and *Vázquez Guerreiro et al. v. Spain*, para. 8.2.

¹⁶ *Vázquez Guerreiro et al. v. Spain*, para. 8.3.

¹⁷ *López Albán et al. v. Spain* (E/C.12/66/D/37/2018), para. 11.5.

¹⁸ *Ibid.*, para. 11.7.

¹⁹ *Ibid.*, para. 11.6.

²⁰ *Ibid.*, para. 11.5.

²¹ *Ben Djazia et al. v. Spain*, para. 15.1.

8.5 The procedural protections that should be afforded in relation to eviction include: (a) an opportunity for genuine consultation on alternative accommodation with those affected and, if a lack of resources means that there are no viable alternatives, a requirement that the administrative authorities present the available options with a view to ensuring that the eviction will not leave anyone homeless; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) provision, in reasonable time, of information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to all those affected; (d) especially where groups of people are involved, the presence of government officials or their representatives during an eviction; (e) proper identification of all persons carrying out the eviction; (f) no execution of eviction orders in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies to challenge the eviction; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.²²

8.6 States parties have an obligation to consider all alternatives to eviction, never to proceed to an eviction if doing so will leave anyone homeless and to ensure that those affected are adequately consulted. Forced eviction as a punitive measure is also inconsistent with the norms of the Covenant.²³ In this regard, the Committee notes that public policies or legislative measures that criminalize individuals or groups of individuals on the basis of their housing situation may be discriminatory and contrary to the right to adequate housing and to other obligations of States parties to the Covenant, in particular when they affect groups in vulnerable situations.²⁴ The criminalization of a social issue, such as homelessness, constitutes a disproportionate response by the State that does not serve the intended purpose. Criminal law should be applied as a last resort. The State party should seek to respond in other, less harmful ways to the housing shortage and the limited opportunities afforded to people of limited means to gain access to decent housing, which is the underlying reason for the occupation of houses without legal title. The Committee considers that States parties should ensure an effective and adequate remedy to challenge forced evictions and the criminalization of those who lack access to adequate housing or live in illegal settlements.²⁵

8.7 The Committee recalls that State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to provide the family with the widest possible protection (Covenant, art. 10 (1)). The obligation of States parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it includes the protection of the family unit, especially when the persons being evicted are responsible for the care and education of dependent children.

State's duty to provide alternative housing in case of need

9.1 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 individuals 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's granting or guaranteeing of 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.²⁸ The information provided by the State party

²² Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 15.

²³ *Ibid.*, para. 12.

²⁴ *A/HRC/49/48*, paras. 47–49. See also *Vázquez Guerreiro et al. v. Spain*, para. 8.8.

²⁵ *A/HRC/40/61*, paras. 41 and 42.

²⁶ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 16.

²⁷ *Ben Djazia et al. v. Spain*, para. 15.2.

²⁸ *Ibid.*, para. 15.5.

should enable the Committee to consider the reasonableness of the measures taken in accordance with article 8 (4) of the Optional Protocol.²⁹

9.2 States parties may choose a variety of policies for this purpose.³⁰ Any steps taken, however, should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.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 that purpose in any particular context.³² They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; a location in a healthy environment that allows access to public and social services (education, employment and health care); and cultural adequacy, to ensure that expressions of cultural identity and diversity are respected.³³

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 place of 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. It must also take account of the right of members of a family not to be separated³⁴ and to enjoy a reasonable level of privacy.³⁵

Analysis of the proportionality of the authors' eviction

10.1 The Committee notes that the authors did not have any legal title to regularize their occupancy of the houses. What must be ascertained is whether the eviction of the authors and their families was necessary and proportionate to the objective pursued and whether the State party took the consequences of evicting them into account.

10.2 As mentioned in paragraph 8.3 above, the Committee has drawn up a series of circumstances that must be assessed when analysing the proportionality of an eviction. It has also considered factors relevant to a consideration of proportionality: (a) the availability of adequate alternative housing; (b) the personal circumstances of the occupants and their dependants, including whether there are any vulnerability factors, such as age and disabilities, among others, that would cause them to suffer disproportionately from the eviction;³⁶ (c) the cooperation of the occupants with the authorities in seeking suitable solutions; and (d) the difference between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to banks, financial institutions or other entities.³⁷

10.3 The Committee observes that, according to the information on file, it does not appear that the judicial authorities took into account any of the factors mentioned in paragraph 10.2 in its decision related to the eviction of the authors. The Committee notes that, despite the authors' various requests for social housing and despite social services having been aware of their need for such housing since 2011, the authors were never offered any adequate alternative housing that would have allowed each family to remain together. The Committee observes that the authors requested meetings with the competent authorities and gave the railway company the opportunity to regularize their situation as tenants. Those attempts at

²⁹ Ibid. See also *Vázquez Guerreiro et al. v. Spain*, para. 9.1.

³⁰ *Ben Djazia et al. v. Spain*, para. 15.3.

³¹ Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 2.

³² Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8.

³³ Ibid., para. 8.

³⁴ For example, *López Albán et al. v. Spain*, para. 9.3.

³⁵ For example, *Hernández Cortés et al. v. Spain* (E/C.12/72/D/26/2018), para. 9.4.

³⁶ *Vázquez Guerreiro et al. v. Spain*, para. 8.9.

³⁷ Ibid., para. 10.2. See also *El Mourabit Ouazizi et al. v. Spain* (E/C.12/72/D/133/2019).

collaboration were not taken into account in the decision to evict the authors. Moreover, the eviction was the result not of a request by an individual who needed the housing as a home or to provide vital income but of proceedings brought by the State railway company, which had neglected the premises for several years.

10.4 The Committee notes that measures taken within the framework of an eviction must be reasonable and appropriate in view of the interests at stake and the circumstances of the persons affected.³⁸

10.5 The Committee considers it relevant to state that, in the light of the specific circumstances of the present cases, a proper proportionality test should have considered: the weighing of the socioeconomic vulnerability of the authors and their families; the differential impact of the eviction on the authors, as heads of households in a precarious economic situation; the best interests of the children and their right to be heard; the authors' previous applications for social housing; the availability of social housing provided by the responsible administrative authorities and the existence of alternative means of resolving the problem; and the lengthy period of time for which they had resided in the houses. In order to assess the authors' situation, the authorities involved should have held a genuine and effective consultation with them and should have requested the relevant administrative authorities to provide information on the availability of social housing for the authors and their families.

10.6 The Committee is therefore of the view that the failure to carry out a sufficiently comprehensive analysis of the proportionality of the eviction constituted a violation by the State party of the authors' right to housing under article 11 of the Covenant.

D. Conclusion and recommendations

11.1 On the basis of all the information provided and in the particular circumstances of the present cases, the Committee considers that the eviction of the authors and their families without an adequate proportionality test by the judicial authorities, in the absence of a consideration of the disproportionate impact that the eviction might have on the authors and their families and of the best interests of the child, and without respecting the procedural guarantees of adequate and genuine consultation, would constitute a violation of the authors' right to adequate housing.

11.2 The Committee, acting under article 9 (1) of the Optional Protocol, is of the view that the State party violated the authors' right under article 11 (1) of the Covenant. In the light of its Views in the present communications, the Committee makes the following recommendations to the State party.

Recommendations in respect of the authors

12. The State party is under an obligation to provide the authors with an effective remedy, in particular by: (a) reassessing, if they are not currently in adequate housing, their state of necessity and their place on the waiting list, taking into account the length of time that their application for housing has been on file with the relevant authorities, 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) providing the authors with financial compensation for the violations of their rights; and (c) reimbursing the authors for the legal costs reasonably incurred in submitting the present communications, at both the domestic and the international levels.

General recommendations

13. 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

³⁸ *Ben Djazia et al. v. Spain*, paras. 15.3 and 15.5.

legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party has an obligation:

(a) To ensure that its normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation of their Covenant rights, including persons who have scarce economic resources or are occupying a dwelling without legal title, to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;

(b) To take the necessary measures to ensure that evictions affecting persons who do not have the means of obtaining alternative housing are carried out only within the framework of proceedings involving genuine and effective consultation with the persons concerned, in which all available alternative housing (whether belonging to such persons or made available by the relevant State agencies) is assessed and only after 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 and/or other persons in vulnerable situations. If the group to be evicted includes children, the proceedings must guarantee their right to be heard;

(c) To take the necessary measures to solve the problems caused by the failure of the courts and social services to coordinate their efforts, which can result in an evicted person's being left without adequate accommodation;

(d) To develop and implement, to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991). This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable, timely and measurable manner.

14. In accordance with article 9 (2) of the Optional Protocol and rule 21 (1) of the rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee. The State party is also requested to publish the Views of the Committee and to distribute them widely, in an accessible format, so that they reach all sectors of the population.
