

The European Contribution to the Right to Housing

Standards, Litigation
and Advocacy

L'apport européen au droit au logement

Normes,
contentieux
et plaidoyer

Workshop 1. The principle of proportionality in the decisions of the Committee on Economic, Social, and Cultural Rights

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UN Committee on Economic, Social and Cultural Rights - CESCR-



- Since 2013, the UN CESCR competent to receive & consider complaints from individuals who claim to be victims of a violation of rights
- The CESCR has issued several decisions/ views on the violation of the right to housing and eviction guarantees in Spain, and more than 100 complaints are awaiting a decision.
- Walters v. Belgium. (Communication No. 61/2018)
[23.11.2021]

Decisions of the CESCR against Spain

- Hakima El Goumari and Ahmed Tidli (Communication No. 85/2018) [18 February 2021]
- Rosario Gómez-Limón Pardo v. Spain (Communication No. 52/2018) [05.03.2020]
- López Albán v. Spain (Communication No. 37/2018) [11.10.2019]
- M.B.D. and others v. Spain (Communication No. 5/2015) [5.07.2017]
- I.D.G v. Spain (Communication No. 2/2014) [17.06.2015]

Ben Djazia et al v. Spain

E/C.12/61/D/5/2015

- Eviction of a family of tenants as a result of legal proceedings initiated by the landlord.
- The family was eventually evicted without adequate alternative accommodation
- The CESCR found that Spain had violated the right to housing of the applicant since their eviction had been carried out **without ensuring adequate alternative accommodation.**
- The general recommendations to the government of Spain included taking measures to secure alternative housing after an eviction and to **carry out a genuine and effective consultation** especially in cases involving families, elderly people, children and/or other vulnerable people.

López Albán v. Spain

[E/C.12/66/D/37/2018](#)

- Single mother with six children occupying out of necessity a vacant apartment owned by a financial entity. She had been excluded from the possibility of obtaining social housing.
- The family was eventually evicted without adequate alternative accommodation: in one of the emergency shelters they stayed at, two of the minor children were separated from their mother and siblings.
- The CESCR found that Spain had violated the right to housing of the applicant and her children, since their eviction had been carried out without ensuring adequate alternative accommodation and **without a prior proportionality assessment.**

López Albán v. Spain

"A finding that an eviction is not a reasonable measure in a particular moment does not necessarily mean that an eviction order cannot be made against the occupants. Nonetheless, the principles of reasonability and proportionality may require that this order be suspended or postponed to avoid the possibility that the evicted persons become destitute or that other Covenant rights are violated. An eviction order can also be made dependent on other factors, such as requiring public authorities to intervene and assist occupants in order to mitigate the consequences of an eviction" (para. 11.5).

López Albán v. Spain

" whether the person occupied the housing unit bona fide or not, the personal circumstances of the occupants and their dependants, and whether they cooperated with the authorities in the search for solutions adapted to them. Nevertheless, a state party will violate the right to adequate housing if it stipulates that a person occupying a housing unit without a legal title must be immediately evicted, regardless of the circumstances under which the eviction order would be executed (para. 11.7).

General recommendations to Spain in López Albán v. Spain

- To develop a normative framework regulating evictions, allowing judicial authorities **to carry out a proportionality assessment** having regard to the aim pursued by the eviction measure.
- To ensure that **appropriate and effective remedies** are available in this context and that access to social housing is not made conditional on not occupying a housing unit without a legal title.
- To ensure a **genuine and effective consultation** with the persons involved before carrying out an eviction and to establish a protocol in order to ensure that the interim measures are effectively implemented.

Committee
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