

**COMMUNICATION TO THE UNITED NATIONS COMMITTEE ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS UNDER THE  
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS (OP-ICESCR)**

Office of the High Commissioner for Human Rights

United Nations Office at Geneva  
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**1. Petitioners**

Mr. MOHAMED BEN DJAZIA BOURMOUZ, born on April 25, 1959 in Chekeka, Algeria, of Spanish nationality, holder of Spanish identification number DNI 51479151-E.

Ms. NAOUEL BELLILI, born on January 17, 1984 in Constantine, Algeria, of Algerian nationality, holder of Spanish identification number TRT Y-2453970-E.

Mr. ABDENNOUR BEN DJAZIA BELLILI, born on May 6, 2010 in Constantine, Algeria, of Spanish nationality, holder of Spanish identification number DNI 51711434-M.

Mr. ADAM BEN DJAZIA BELLILI, born on September 13, 2012 in Madrid, Spain, of Spanish nationality, without currently available identification number.

The four Petitioners are members of a family: Mr. Mohamed Ben Djazia and Ms. Naouel Bellili are the parents of Mr. Abdennour Ben Djazia and Mr. Adam Ben Djazia. Therefore, the latter are represented by the former.

See copy of family record book attached as document nr. 1.

**Attorney acting on behalf of Petitioners:**

Mr. Francisco Javier Rubio Gil, Madrid Bar Association member nr. 81053, address for legal service: C/ Atocha 91, 2º 28012, Madrid. Telephone: +34 (0) 620 720 725, +34 (0) 91429 1119. Fax: +34 (0) 91420 43 02.

Mr. Rubio Gil has represented the family in all previous actions lodged before Spanish courts.

See authorization to submit this communication attached as document nr. 2.

**2. State involved/Articles violated**

This Communication is submitted to the United Nations Committee on Economic, Social and Cultural Rights and to the ICESCR Member State: SPAIN.

The following Articles in the International Covenant on Economic, Social and Cultural Rights have been violated:

## Article 11

*1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

ICESCR Article 11 has been violated both in its own terms and in its relation to the duty of progressive realization, as well as in respect of General Comment Nr. 4 and General Comment Nr. 7 by the United Nations Committee on Economic, Social and Cultural Rights referring to the right to housing and the prohibition of forced evictions, respectively.

### **3. Exhaustion of domestic resources/Communication to other international procedures**

All domestic resources have been exhausted, including:

Opposition to eviction before Madrid First Instance Court Nr. 37

Appeal against inadmissibility of opposition to eviction before Madrid First Instance Court Nr. 37

Amparo against lower court decision before Spanish Constitutional Tribunal, requesting provisional measures to bar eviction of the family from their only home

#### **Communication to other international procedures**

On 30-May-2013, provisional measures were requested before the European Court of Human Rights. The ECHR rejected the case without adopting any measures.

Following the rejection by the ECHR and the family's eviction, no action was started before the ECHR and there are no procedures pending in international jurisdictions.

### **4. Facts**

1. Mohamed Ben Djazia and Naouel Bellili are married with two children, Abdennour and Adam. They lived in an apartment on the left side, first floor, of General Pintos street, number 62, Madrid. According to local registration records, Mohamed Ben Djazia moved in to the apartment on 15-Jul-1998, and later his wife Naouel Bellili joined him after they married in 2009, and their children after they were born.

See family book record attached as doc. nr. 1.

See legal registration certificate attached as doc. nr. 3.

2. The Petitioners lived in the apartment under a lease agreement. The apartment is owned by Ms. Benilde Peraita Casado, who rented the property to Djazia as of 1998. Throughout the years, the Petitioners paid a monthly rent, and successive agreements and extensions were signed until 31-Aug-2012, when the owner rescinded the lease without possibility of extension.

3. Until 21-Jun-2012, Mohamed Ben Djazia received unemployment benefits. Since then no member of the family has received income of any kind. On the date the eviction was conducted (3-Oct-2013) they were hoping to receive special benefits know as integration assistance (*Renta Mínima de Inserción*) amounting to approximately Euro 532 per month.

Due to their lack of income the Petitioners could not afford any rented housing, nor even a room, considering market practices require showing proof of regular income to access rental property.

See summary of Djazia's work experience attached as doc. nr. 4.

See certificate of application for *Renta Mínima de Inserción* attached as doc. nr.5.

4. Both minors are cared for by their parents. Mohamed Ben Djazia enrolled Abdenmour (aged 3) at a school called Escuela Infantil de Pio XII (Madrid) for the 2013/2014 school year, but he never actually started attending school due to their housing insecurity. They were waiting to find a solution for their accommodation.

5. Increased unemployment is one factor contributing to growing child poverty. In fact, according to recent studies (Eurostat 2011) in 2011 the child poverty risk rate reached 30.6%, thereby surpassing by 3.6 points the poverty risk rate of the population in general (27%). In addition, chronic child poverty (children who have lived 3 of the last 4 years under the poverty level) reached 16.7%, six points above 2007 data.

Council of Europe Commissioner for Human Rights Nils Muiznieks has highlighted the alarming child poverty index and malnutrition issues reported from Spain (Council of Europe press release dated 7-Jun-2013).

6. Since 1999 Mohamed Ben Djazia has repeatedly applied for access to social housing due to special needs before the local housing agency, Instituto de la Vivienda de Madrid (IVIMA).

In fact, he took part in the following calls for applications:

Call for Applications Nr.	Year
1	1999
0	2001
0	2002
19	2004
1	2005
2	2006
3	2007

Call for Applications Nr.	Year
19	2007
74	2008
74	2009
3	2010
4	2010
74	2010
74	2011

Djazia was not awarded housing in any of the said calls. He is still waiting for the decision in call 74/2011, which closes in May 2014 and is still pending.

See IVIMA certificate attached as doc. nr. 6.

7. The last lease contract signed between the apartment's owner and Mohamed Ben Djazia expired on 31-Aug-2012. Due to the fact that Djazia and his family received no income since June 2012 and had no alternative housing, they did not leave the apartment until they were evicted.

Since May 2012 Djazia has intensified his search for housing through multiple ways, approaching both public agencies and private charity organizations.

While he applied again before IVIMA, he requested assistance from local social services (Servicios Sociales del Ayuntamiento de Madrid). The latter replied (see letter attached as doc. nr. 7) offering assistance to pay for one month of rent of a room. This assistance was of no avail, first, because reference was made to renting one room for a family of four and, second, because there is no place in the rental market for a family with no regular income. In addition, the assistance was conditioned to evicted beneficiaries: they only qualified after being evicted. Djazia had to be homeless to receive the assistance.

Finally, Djazia resorted to Caritas, a Catholic organization, which has included him in a housing award process. This process is still pending. See decision attached as doc. nr. 8.

None of the above mentioned applications has been successful. At the time of eviction (first attempt) the Petitioners had no alternative housing available.

8. In the court proceedings of eviction for expired term of lease, which started through an action dated 19-Nov-2012, Mohamed Ben Djazia has consistently argued that he has tried to find alternative housing for himself and his family, and requested provisional measures to stop eviction in the hope of being awarded housing due to special needs in the framework of the above mentioned calls for application.

9. Furthermore, Mohamed Ben Djazia has pointed to the serious risk of violation of the family's basic rights in case eviction takes place without alternative housing being available. However, Djazia's arguments have been plain and simply rejected due to the fact that the Spanish legislation on leases fails to include specific court proceedings to decide on such extreme situations.

10. On 11-Sept-2013 eviction was first attempted but failed due to the presence of neighbors and social movement activists. A new eviction date was set for October 3, 2013 at 9.30 a.m. Police reinforcement was expressly required to guarantee eviction.

11. On 10-Sep-2013 Mohamed Ben Djazia, having exhausted all ordinary actions before Madrid First Instance Court Nr. 37, lodged an amparo action before the Madrid Constitutional Court, expressly requesting provisional measures (*inaudita altera parte*) to temporarily stop the eviction. No reply followed.

On 20-Sep-2013, once the first eviction attempt had been suspended, Mohamed Ben Djazia renewed and updated his request for provisional measures before the Constitutional Court, submitting the minutes of suspended eviction dated September 11 and the new plans for eviction on October 3.

12. On 3-Oct-2013, all four Petitioners were evicted. Support was provided by

municipal police forces, which blocked the street to prevent the presence of social movement members opposing the evictions.

On the same date, SAMUR (municipal emergency services) offered housing in a collective home for 7 days, extendable to 14 days.

The Petitioners stayed at the said home for 10 days. They had been asked to leave the home after one week.

See Madrid Samur Social certificate attached as doc. nr. 8 bis.

Afterwards, faced with no alternatives, the family slept four nights in Mohamed Ben Djazia's car.

Finally, a friend of Djazia's living in Boadilla del Monte gave them shelter. They stayed at his place for several weeks.

Currently the Petitioners are renting accommodation from an individual.

13. On 21-Feb-2014, the Constitutional Court notified Petitioners that the amparo action was not admissible. This led to the exhaustion of domestic resources.

14. The Committee on Economic, Social and Cultural Rights (CESCR), in its Concluding Observations of May 2012, referred to forced evictions taking place in Spain without the authorities complying with minimum requirements of prior notice, prior consultation or alternative accommodation, as well as the lack of adequate legislation to comply with all prior requirements in cases of eviction:

*22. The Committee is concerned that forced evictions continue to take place without due legal safeguards and without the persons affected being consulted in advance or being offered alternative accommodation or any compensation (art. 12).*

*The Committee recommends that the State party adopt a legal framework that establishes appropriate requirements and procedures to be followed prior to an eviction and takes into account the Committee's general comment No. 7 on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions, the recommendations of the Special Rapporteur on adequate housing, and the United Nations basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).*

## 5. Violations

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) sets forth the right of all persons to adequate housing. By signing the ICESCR in 1977, Spain assumed the obligation to effectively promote this right and, applying the principle of progressive realization and exhaustion of resources, to make available housing for persons lacking income or facing risk of being evicted.

The specific obligation of making available housing for persons facing risk of being evicted and lacking alternative accommodation directly derives from ICESCR Article 11, as well as from its interpretation and implementation through General Observations Nr. 4 and 7 by the United

Nations Committee on ESCR.

Although Spain has implemented relief measures for persons in a poor economic situation, basically through regional and local governments (in Madrid, Instituto de la Vivienda de Madrid, IVIMA and Empresa Municipal de la Vivienda y el Suelo, EMVS), the truth is that their scope is inadequate. This is clearly seen in the case of Mohamed Ben Djazia and his family, for whom neither the Madrid local government nor the regional government through IVIMA had available housing at the time of their impending eviction.

In this case the violation is particularly blatant, due to the fact that Mohamed Ben Djazia had been requesting social housing for ten years before IVIMA, as shown in the attached documents.

Also contrary to the obligations in the Covenant and a *per se* obligation of its Article 11 is the reply issued by the local government, the municipality of Madrid, through its social services, as they stated they would only consider the request for housing once proven that the eviction had taken place.

Mohamed Ben Djazia reported this situation of exposure before the court deciding on the eviction of rented housing, as well as the authorities' stand in not providing housing for a family including minors facing eviction without alternative housing. The court rejected the opposition to eviction on formal grounds, noting that procedural rules on leases do not foresee opposition due to lack of housing or a procedural phase in which a court may examine the interests at stake.

In our opinion, Spanish legislation in itself, by failing to consider procedural ways to discuss the situation of persons facing eviction, is also in violation of Article 11 of the Covenant in terms of "legal safeguards" to realize the right.

This interpretation was also reported to the Constitutional Court together with a request for suspension of eviction, which did not even lead to a reply.

We understand that the Spanish Constitutional Court also openly violated Article 11 of the Covenant by failing to hear the request for assistance. It is unacceptable that the Constitutional Court failed to issue an opinion until 4 months had passed by and once the eviction had already taken place, showing no interest in the whereabouts of the Petitioners.

Therefore, we understand that Spain, having violated Article 11 of the International Covenant on Economic, Social and Cultural Rights, must provide the Petitioners with adequate compensation and, beyond this specific case, adopt measures to prevent future violations and always provide adequate housing for persons facing eviction.

Summing up:

1. We understand there has been a violation of Article 11 of the Covenant in itself as a human right denied to the Petitioners without any adequate alternative.
2. We understand Article 11 of the Covenant has been violated in its implicit relationship with the prohibition of forced evictions.
3. We understand there has been a violation of the legal safeguards of due process and judicial review in case of eviction as part of the human right to adequate housing.

Furthermore, in spite of the fact that both of Djazia's children are minors and, as such, entitled to special protection (Convention on the Rights of the Child), Spain also failed to react adequately to the threat of eviction of their only housing.

## 6. Supporting documentation

Authorization to represent, doc. nr. 2.

### Decisions by Spanish courts:

8-Jul-2012. Notice to Petitioners of court order by Madrid First Instance Court Nr. 37, including eviction (initiation) date on 11-Sep-2013 (doc. nr. 9) and court order of enforcement of decision (doc. nr. 10)

19-Jul-2012. Mohamed Ben Djazia submits opposition to court order of enforcement of decision and eviction date, requesting at least a suspension or postponement of eviction (doc. nr. 11)

22-Jul-2013. Madrid First Instance Court Nr. 37 declares inadmissibility of opposition to eviction *due to the fact that the grounds are not foreseen in Art. 556.1 of LEC* (doc. nr. 12)

26-Jul-2013. Mohamed Ben Djazia submits appeal to annul inadmissibility decision regarding his opposition to enforcement of decision and suspension of eviction, expressly alleging violations of basic rights under the Constitution and social rights (doc. nr. 13)

6-Sep-2013. Madrid First Instance Court Nr. 37 rejects appeal to annul on the grounds that *the appellant's arguments are limited to referring to violations of constitutional provisions*

10-Sep-2013. Mohamed Ben Djazia submits amparo action before Constitutional Court, expressly alleging violation of European Convention of Human Rights and requesting provisional measures to stop entry into a home until a decision is made (doc. nr. 14)

11-Sep-2013. Under order by Madrid First Instance Court Nr. 37, eviction of Petitioners starts but is suspended. New eviction date is scheduled for 3-Oct-2013 at 9.30 a.m. Minutes of suspension are recorded (doc. nr. 15)

13-Sep-2012. Constitutional Court reports amparo action by Petitioners will be reviewed by First Section of First Chamber (doc. nr. 16)

20-Sep-2013. Mohamed Ben Djazia submits brief before Constitutional Court updating request of suspension of eviction (doc. nr. 17)

3-Oct-2013. Eviction of Petitioners

**21-Feb-2014**. Spanish Constitutional Court notifies Petitioners that amparo action is not admissible and no other action is possible. **FINAL DECISION MARKS EXHAUSTION OF DOMESTIC RESOURCES** (doc. nr. 18)

Signed by Francisco Javier Rubio Gil, on behalf of Petitioners Mohamed Ben Djazia, Naouel Bellili, Abdennour Ben Djazia and Adam Ben Djazia.

Madrid, 20 February 2015