

PERMANENT REPRESENTATION OF SPAIN
to the Office of the United Nations and
other international agencies
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The Permanent Mission of Spain to the Office of the United Nations and other International Agencies based in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and, regarding its note verbale with reference G/SO CESCRCR ESP (4) dated 9 February 2017, has the honor to submit, while apologizing for the delay in this submission, the observations made by the Ministry of Justice's General State Attorney regarding the third party intervention submitted by "Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination within this framework," related to communication No. 5/2015 submitted before the Committee on Economic, Social and Cultural Rights on behalf of Mr. Mohamed Ben Djazia Bourmouz and family, under the Optional Protocol to the International Convention on Economic, Social and Cultural Rights.

The Permanent Mission of Spain takes this opportunity to reiterate to the United Nations Secretariat (Office of the High Commissioner for Human Rights) the assurances of its highest consideration.

Geneva, 24 March 2017

*United Nations Secretariat
Office of the High Commissioner for Human Rights
Palais Wilson
Geneva*

**Committee on Economic, Social and Cultural Rights
United Nations**

Ref. United Nations. Communication No. 5/2015

According to the letter sent by the General Secretary of the United Nations, High Commissioner for Human Rights, we hereby submit the following **observations on the intervention by Special Rapporteur to the United Nations on Adequate Housing**.

- Measures Adopted by Spanish Public Agencies:

Given the arguments made by the Special Rapporteur referring to alleged failures to comply with Spain's obligations related to vulnerable groups, below we inform of the most relevant measures adopted by Spanish public agencies within this framework since the beginning of the crisis.

Royal Law-Decree 6/2012, dated March 9, which established urgent measures to protect mortgage debtors without income, and Royal Decree 27/2012, dated November 15, which created urgent measures to further protect mortgage debtors, and Law 1/2013, dated May 14, which included measures to strengthen protection for mortgage debtors, debt restructuring and rented social housing.

State incentive plan to promote rental of housing, building refurbishing, and urban regeneration and renovation in the 2013-2016 period, approved by Royal Decree 233/2013 dated April 5.

Through the said regulations, state legislators sought to protect the most vulnerable groups facing major difficulties to pay for housing, resorting to measures such as making it possible to restructure mortgages by applying the Good Practices Code, suspending evictions, promoting access to rental housing with reduced rent by creating a Social Housing Fund or through the possibility that debtor and financial entity agree on a "dation in payment," so that debtor may stay in the housing as tenant for two years with a reduced rent.

State legislators have also approved Royal Law-Decree 1/2015, dated February 27, which established a second-opportunity mechanism, reduction of financial burden and other social measures, and Law 25/2015, dated July 28, which created a second-opportunity mechanism, reduction of financial burden and other social measures, including measures of various types aimed at offering a second opportunity to natural persons in debt, as well as at widening the protection for particularly vulnerable groups. This regulation established additional improvements to those previously adopted in order to widen the group of persons qualifying for protection under Royal Decree 6/2012 and Law 1/2013. With this purpose, a set of measures was established, including:

- A second opportunity within insolvency proceedings available for debtors acting in good faith, which, for the first time, includes the possibility of natural persons benefitting

from extrajudicial payment agreements used to restructure debt and, if this is not possible, from debt relief within an insolvency proceeding. Accordingly, insolvency proceedings will enable debt relief, including that section of debt which is not covered by foreclosure proceedings in the case of mortgages secured by the housing.

- Furthermore, within the framework of extrajudicial payment agreements, the role of the mediator is strengthened and becomes more flexible, simplified rules of procedure are established, and notary and record fees are significantly reduced; in addition, foreclosures, including main residence foreclosures, are suspended throughout the negotiation phase.

- The group protected by the Good Practices Code for mortgage debtors is expanded to include a wider set of beneficiaries and additional measures for which they may qualify are established. In fact, “floor clauses,” if applicable, are declared non enforceable for an indefinite period of time for debtors assigned to the new threshold.

- The suspension of evictions set forth in Law 1/2013, dated May 14, of measures aimed at further protecting mortgage debtors, restructuring debt and social rental, is prolonged for an additional period of two years.

The objective of the so-called “second opportunity” is to reconcile the interests of creditors and debtors through guaranteed proceedings making it possible to cancel debts in an orderly manner. The State had already adopted measures along this line, which were strengthened through Law 25/2015, dated July 28, which established a second opportunity mechanism, reduction of financial burden, and other social measures, developing a permanent framework of personal insolvency in line with recommendations issued by major international agencies and the European Union.

Furthermore, on 14 September 2015, the Social Housing Fund Agreement was modified to expand the number of housing units allocated to social rental, to widen the group of potential beneficiaries, and to extend its effective term until 2017. Therefore, the existence of persons in a situation of social risk needing protection is not in doubt.

During the four and a half years in which the Good Practices Code (GPC) has been in place, a total of 40,446 families have benefitted from it to ease their mortgage burden. Of that total, 33,765 families have restructured their debt and 6,674 qualified for dation in payment. In the first semester of 2016, 9,507 families benefitted from the GPC, that is to say 30.2% more than in the previous semester, according to data provided to Congress by the GPC Control Committee. This information is included in the VIII Report on GPC Compliance issued under the terms of Royal Law-Decree 6/2012 of urgent measures to protect mortgage debtors.

The GPC, together with the Social Housing Fund (SHF) and the suspension of mortgage evictions, are part of the set of measures brought forward by the State since the beginning of the 10th legislative term in order to respond to the problem of evictions. In total, 70,096 families have benefitted from the measures aimed at groups risking exclusion: 40,446 through the GPC; 6,800 rental agreements with reduced rental rates were enabled through the SHF; and until September 22,850 evictions were suspended through the mortgage moratorium.

According to GPC data provided to Congress, in the first six months of 2016, 4,000 more applications were received as compared to the preceding semester, adding up to 17,306 applications. The mean rate applied to the family loans was 2.85% and the average life of the loans, slightly over 22 years. In one fourth of the applications received the debt was below 50,000 euro. Of the 16,276 applications processed in the first semester of 2016, 9,507 applications were accepted and 5,437 were rejected due to failure to meet the requirements.

The GPC was signed in March 2012 by practically all entities providing mortgages in Spain, 94 so far. The Government promoted this code, which is not obligatory but creates binding obligations, during two years among signatory entities. The objective is to provide a solution to families facing difficulties in paying mortgages, be it because they are unemployed or lack income. Three optional solutions were established: renegotiation of terms and rates with financial entities or debt restructuring, release and dation in payment with vesting periods, 40-year-long amortization, reduced interest rate to Euribor + 0.25, and even the possibility of remaining in the housing by paying a reduced rental.

The 8 reports on the implementation of the Good Practices Code are accessible through the following link:

<http://www.mineco.gob.es/portal/site/mineco/menuitem.32ac44f94b634f76faf2b910026041a0/?vgnextoid=d43ad0d172ff7310VgnVCM1000001d04140aRCRD>

The Social Housing Fund (SHF) had awarded 9,020 housing units by the end of 2016, which accounts for more than 90% of the housing available for vulnerable groups. Since its creation in 2013, the SHF has gradually increased its housing stock up to a total of 9,866 housing units provided by 29 financial entities. Its effective term has been prolonged one more year until 17 January 2018. Furthermore, there are plans to extend for two more years the suspension of evictions (until January 2019), which should have expired this year, and to widen protection measures to mortgage debtors affected by the crisis and families with dependent minors (not just children up to three years old).

So far more than 78,600 families have benefitted from the set of instruments introduced by the Government in 2012 to mitigate the effects of the crisis and to respond to the problem of evictions. In fact, more than 24,000 evictions have been suspended and 9,020 housing units have been awarded through the SHF.

The SHF was created in January 2013 with 5,892 housing units contributed by the banks to assist the most vulnerable families through reduced rents (between 150 and 400 euro per month, with a ceiling of 30% of family income). The original effective term of the Fund expired two years later, but the Government has prolonged it twice, currently until January 2019. The SHF was established through an agreement between the Ministries of Economy, Sanitation and Development, the major credit institutions and their associations, the Federación Española de Municipios y Provincias (FEMP, Spanish Federation of Municipalities and Provinces), and Plataforma del Tercer Sector (a network of civil society organizations).

With 9,866 housing units approved in September 2015, the SHF is capable of covering a higher number of situations requiring a response from all involved agencies and entities. Furthermore, new groups have been added to the list of those qualifying for SHF housing. In fact, persons older than 60 years and married or unmarried partners without children may apply. In addition, at least 5% of SHF housing is awarded to persons evicted from their homes due to failure to pay non mortgage loans, provided they meet the other requirements.

Such requirements were added to those already in place, so that no person or family facing difficulties is left without assistance. All persons who have lost their habitual housing after 1 January 2008 due to failure to pay a mortgage loan, including those who have not yet been evicted or who have agreed on a dation in payment, may apply to the SHF. Applicants must meet a series of economic requirements; in fact, the total yearly income of the family unit should not exceed a ceiling of three times the Multiple Effect Public Income Index.

Furthermore, applicants must comply with other vulnerability requirements, such as families with three or more children; having dependent minors; disabled members in the family; debtor is unemployed and has exhausted all benefits; victims of gender violence; early retired or retired persons who have provided their housing as security for their children or grandchildren; and any other vulnerable person or family unit for whom, according to a report by social services, housing is an indispensable asset to maintain their social inclusion.

All information on the SHF is available through the following link:

https://www.fondosocialdeviviendas.es/fsv_que-es

Regional governments have also adopted protection measures. Since the author is a resident of the Autonomous Community of Madrid, we will refer to Decree 52/2016, dated May 31, issued by the Madrid City Council (BOCM No. 133), which created the Social Housing Emergency Stock and defined housing award proceedings for housing owned by the Community of Madrid's Social Housing Agency.

The Social Housing Emergency Stock is a set of housing units part of the housing stock owned by the Community of Madrid's Social Housing Agency reserved to respond to exceptional emergency situations.

The aim of the Social Housing Emergency Stock is to provide temporary accommodation for individuals or families who are in a situation of severe housing difficulty, in cases of eviction, substandard housing, or extraordinary events.

The Community of Madrid's regulations and awarding criteria are available through the following link:

http://www.madrid.org/cs/Satellite?c=PVIV_Generico_FA&cid=1142483901761&pagename=PortalVivienda%2FPVIV_Generico_FA%2FPVIV_pintarGenerico

Also within the scope of local government, measures have been adopted to prevent evictions and to provide solutions for vulnerable groups, including, among the latest measures, an agreement signed by the Madrid City Government on 12 January 2017 with the Madrid Bar

Association. The aim of this agreement is to coordinate work between both institutions so that whenever an attorney becomes aware of a situation of vulnerability within the framework of eviction or foreclosure proceedings involving eviction, the said attorney will have a permanent channel to transmit to the Madrid City Government the required information on the affected families or individuals, provided the latter have provided their consent.

This makes it easier for the Equality, Social Rights and Employment Department to analyze the situation on a per case basis and to offer alternative ways to mitigate the situation of the affected individuals. Accordingly, assistance will be provided to individuals or families in risk of being evicted by offering them a series of resources, such as alternative accommodation or emergency assistance, orientation and assessment.

More information is available at:

http://www.icpm.es/actualidad_noticias.asp?id=2136

We have hereby highlighted part of the measures adopted by Spanish public agencies to respond to the situation of vulnerable groups affected by the crisis, without referring to the action undertaken by the Judiciary within this framework.

For example, cooperation agreements were signed by the governing body of the Judiciary with regional governments (e.g. <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunales-Superiores-de-Justicia/TSJ-Comunidad-Valenciana/Sala-de-prensa/Archivo-de-notas-de-prensa/EI-CGPJ-y-la-Generalitat-valenciana-firman-un-convenio-para-detectar-situaciones-de-vulnerabilidad-en-casos-de-desahucio>) and by Salas de Gobierno de Tribunales (Governing Chamber) with local administrations (e.g. <http://www.poderjudicia.es/cgpj/es/Poder-Judicial/Tribunales-Superiores-de-Justicia/TSJ-Comunidad-Valenciana/Sala-de-prensa/Archivo-de-notas-de-prensa/La-Audiencia-de-Castellon-el-Ayuntamiento-de-Burriana-y-los-procuradores-firman-un-protocolo-frente-a-situaciones-de-vulnerabilidad-en-casos-de-desahucio>).

- On the observations made by Spain:

The Special Rapporteur, in paragraph 10, has argued that States often use “moral” explanations related to the situation of the authors referring to their behavior or lack of motivation as a cause for their situation.

It is worth noting that, in the observations made by Spain, reference was made only to the actual situation of the author such as is known by the social services and by the actual persons involved who have provided the authors and their family with their assistance and continuous support for years.

We would like to point out that it does not appear to be adequate to claim that social services personnel, in this specific case of the Madrid City Government, may have had attitudes or behaviors of “morally judging” the individuals they have been trying to help, without considering or having a deep and full knowledge of the complexities of their work and dedication applied in every single case.

Madrid, 17 March 2017

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