



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

20 June 2022

Case Document No. 2

Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL), *Confederación Sindical de Comisiones Obreras* and International Movement ATD Fourth World v. Spain
Complaint No. 206/2022

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY AND
THE REQUEST FOR IMMEDIATE MASURES**

Registered at the Secretariat on 31 May 2022



MINISTERIO
DE JUSTICIA

ABOGACÍA GENERAL DEL ESTADO
DIRECCIÓN DEL SERVICIO JURÍDICO DEL ESTADO

SUBDIRECCIÓN GENERAL DE CONSTITUCIONAL Y
DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

OBSERVATIONS ON THE REQUEST FOR IMMEDIATE MEASURES

COLLECTIVE COMPLAINT

No. 206/2022

**DCI, MEDEL, FEANTSA, CCOO and ATD FOURTH WORLD
v. Spain**

CORREO ELECTRÓNICO:
aetedh@mjusticia.es

C/ SAN BERNARDO, 45
28015 MADRID
TEL.: 91 390.47.78

Index

| | | |
|------|--|----|
| I. | FACTS | 4 |
| 1. | Preliminary issue: regarding the complexity of the problems raised by the illegal settlement of Cañada Real Galiana..... | 4 |
| 2. | Short reference to the historical and social context..... | 4 |
| 3. | The 2017 Cañada Real Galiana Regional Agreement | 5 |
| 4. | Regarding the situation in Sectors 5 and 6 | 6 |
| 5. | On the situation of Sectors 5 and 6 of Cañada Real Galiana concerning electricity supply | 7 |
| 5.1 | On the electricity distribution system in Cañada Real Galiana..... | 7 |
| 5.2 | On power outages in October 2020 | 9 |
| 5.3 | Situation after the power outages in October 2020..... | 11 |
| 5.4 | Public authorities' response to the power outages in October 2020 .. | 11 |
| II. | INADMISSIBILITY FOR THE COMMITTEE TO ADOPT THE REQUESTED IMMEDIATE MEASURES..... | 14 |
| 1. | The immediate measures requested are in line with the merits of the complaint | 14 |
| 2. | Failure to meet the factual requirement of immediate emergency | 15 |
| 3. | Existence of a number of domestic court rulings rejecting the reactivation of the electricity supply requested as an immediate measure. | 16 |
| 4. | Currently there is no infrastructure for the distribution of electricity in the area that meets the safety conditions to provide service to all residents in Sectors 5 and 6 | 19 |
| 5. | Social and welfare measures taken by the authorities to alleviate the lack of power supply in the affected areas..... | 21 |
| III. | TO CONCLUDE | 24 |



In a letter dated 18/03/2022, the Kingdom of Spain has been notified, under Article 5 of the Additional **Protocol** to the Revised European Social Charter, Providing for a System of Collective Complaints, of the collective complaint submitted on 5/03/2022 by a number of organisations to the European Committee of Social Rights, which has been assigned the number 206/2022.

In Section VI, §§ 444 to 464 of the complaint, the complainants request, under Rule 36, that the Committee indicates to the State the adoption, in a coordinated manner between all authorities concerned at the national, autonomous and regional level, of “all possible measures with a view to avoiding serious, irreparable injury to the life, physical and moral integrity of the population of Sectors 5 and 6 of Cañada Real” and, in particular, “to ensure that all concerned persons have access to electricity and heating, in particular taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities and elderly persons”. To this purpose, the complainants invoke the existence of an exceptional situation where the persons concerned are said to be at risk of suffering serious and irreparable harm in view of the extremely low temperatures expected between January and March.

Subsequently, in a letter dated 8/04/2022 and in conformity with Article 6 of the above-mentioned Additional Protocol, we have been requested to submit by 31 May 2022 written observations on admissibility and on the request for immediate measures raised by the complainants.

Accordingly, on behalf of the Kingdom of Spain, we hereby submit our observations on the complainants’ request for immediate measures. To this end:

- in the first section, we will describe an account of the most relevant facts in order to contextualize the request made and to be able to assess its merits - without this being an exhaustive and complete factual account, which we refer to in the subsequent submission of observations on the merits;
- in the second section, we will set out the various reasons why it is not appropriate to comply with the request made by the complainants.

I. FACTS

1. Preliminary issue: regarding the complexity of the problems raised by the illegal settlement of Cañada Real Galiana

1. The situation of the illegal settlement in Cañada Real Galiana poses, in general terms - besides the specific problem of the power outage in certain Sectors reported in the collective complaint that gave rise to the present proceedings - a problem of extraordinary complexity from a social, economic, urban planning and legal point of view.
2. The search for a solution to the precarious, unhealthy and inadequate living conditions of residents in the shantytown in conditions of social vulnerability is a challenge for public authorities, and it is currently a priority for the competent Administrations to address the problems arising from this situation from different points of view, in order to articulate the different mechanisms necessary to remedy such situation.
3. Without prejudice to the further development of the present submission and the written observations on the merits that the Government of Spain will submit at the appropriate procedural step, we consider it worth highlighting that a number of Public Administrations are involved in the solution of the different problems derived from the existence of illegal settlements (at the State, Autonomous Community and local levels), and have been making an important effort, through different mechanisms and bodies of coordination and cooperation, to effectively tackle these problems.

2. Short reference to the historical and social context

4. The so-called Cañada Real Galiana has been a cattle track used for the movement of livestock for centuries.
5. The route is approximately 400 km long, 93 km of which run through the territory of the Self-governing Community of Madrid.

6. In a section of the road of approximately 14 km, which runs through the municipalities of Coslada, Rivas-Vaciamadrid and Madrid, in its districts of Vicálvaro and Vallecas Villa, since the 1950s and 1960s it began to be the object of irregular settlements, with a proliferation of illegal constructions in the area. This phenomenon has been *in crescendo* over the years, and has given rise to what we could call "a linear city", unplanned, outside urban planning legality and made up of very different types of buildings and a marked socio-economic and cultural diversity of the families living in the Cañada Real Galiana at present.
7. The 14 km section of Cañada Real Galiana is divided into 6 Sectors. The complaint that gave rise to the present actions refers, as we shall see, to the situation arising from the power outage in two of these Sectors – namely, Sectors 5 and 6.

3. The 2017 Cañada Real Galiana Regional Agreement

8. The public authorities were aware of the need to address in a global and effective manner the complex problem posed by the existence of the irregular settlement in Cañada Real Galiana. In 2017, due to a broad consensus in order to promote a definitive solution to this problem, the so-called "Cañada Real Galiana Regional Agreement" was signed between the Government of Spain, the Self-governing Community of Madrid, and the Town Councils of the three municipalities (Madrid, Coslada and Rivas Vaciamadrid) through which the 14 km section extends.¹
9. The Regional Agreement set out a series of objectives, proposals and commitments aimed at establishing the most appropriate solution for the irregular settlement of Cañada Real, with the participation of all the agents involved - including the Public Administrations responsible for the different areas of action affected, as well as "third Sector" entities and residents' associations.

¹ The complainants have provided the Cañada Real Galiana Regional Agreement as Annex 6.

The Regional Agreement included the objectives and strategic lines of action in the areas of social integration (acting in the community, education, employment and health contexts), urban planning and housing, and a permanent organisational structure was set up, creating different collegiate bodies that have been carrying out intense activity ever since².

It should be noted that one of the main objectives of the Agreement is to draw up a strategy for the re-housing of residents who, for territorial, environmental, safety or health reasons, cannot remain in their dwellings or substandard housing.

4. Regarding the situation in Sectors 5 and 6

10. Within the six Sectors into which the 14 km of Cañada Real Galiana subject to the irregular settlement are divided, the two Sectors referred to in the collective complaint which is the subject of the request for immediate measures to which we hereby reply, have the following characteristics:

- **Sector 5.** Located in the municipalities of Madrid (Vicálvaro) and Rivas Vaciamadrid, with a length of 1.6 km. It is home to 412 families, 1,601 people (at the date of signing the Agreement), of which 601 are minors.

- **Sector 6.** Located in the municipality of Madrid (Vallecas), with a length of 6.6 km. It is home to 824 families, 2,953 people (at the date of signing the Agreement) of which 1,211 are minors.

11. It should be pointed out that, in contrast to the situation of Sectors 1 to 5 - in which the public authorities are considering the possibility of urban redevelopment, for which different studies and tasks have been carried out -

² These include the Cañada Real Galiana Assembly, a body that channels the participation of all the political forces represented in the different Administrations, social organisations and residents, chaired by the Commissioner for the Cañada Real Galiana of the Self-governing Community of Madrid, and within which Sectoral Committees (Social Committee, Security Committee and Technical-Urbanistic Committee) are set up; the Executive Committee of the Cañada Real Galiana, a decision-making body made up of six members (one representative of each of the affected municipalities, two representatives of the Community of Madrid, one representative of the Government Delegation in the Community of Madrid, and the Commissioner of the Community of Madrid, who chairs it); the Monitoring Committee of the Regional Agreement...

Sector 6 presents exceptional circumstances that prevent this possibility from being considered. These circumstances, related to the ecological and environmental urban development effects of the land located in Sector 6, as well as its proximity to the Valdemingómez waste treatment complex, will be dealt with in greater detail in the observations on the merits of the case.

12. Thus, in the Regional Agreement, a consensual decision was taken to dismantle this Sector and to implement adequate rehousing mechanisms for the vulnerable residents and families in a situation of severe exclusion living there.
13. As a result, a progressive process of dismantling the irregular dwellings located in Sector 6 has begun, parallel to a process of rehousing the inhabitants of this Sector in particular, a process on which the various Administrations are focusing their efforts.

The process is currently underway.

To date, two agreements have been signed between the Self-governing Community of Madrid and Madrid City Council - dated 11 May 2018 and 17 December 2021, respectively.

Pursuant the first agreement, with a budget of approximately EUR18 million, 131 families (more than 400 people) have already been effectively rehoused.

Under the second agreement, with a budget of approximately EUR 34 million, more than 170 families are expected to be rehoused in the near future.

5. On the situation of Sectors 5 and 6 of Cañada Real Galiana concerning electricity supply

5.1 On the electricity distribution system in Cañada Real Galiana

14. The medium voltage power line that runs through Cañada Real Galiana in Sectors 5 and 6 - identified as RSV703 - is owned by the private company *UFD Distribución Electricidad, S.A.* (hereinafter, "UFD").

This company is responsible for supplying electricity and guaranteeing its supply to the customers who are entitled to it and who have formalised the corresponding supply contract (a total of five in Sectors 5 and 6), and is also obliged to maintain its installations in a perfect state of repair - reporting any tampering with them as well as any fraud or other anomalous situations detected.

15. Given the nature of this complaint and the immediate measure requested by the complainants – namely, the provision of electricity in Sectors 5 and 6 of Cañada Real - this party has requested information not only from the relevant authorities, but also from the company UFD on the situation in Sectors 5 and 6 of Cañada Real in terms of electricity supply service.

However, we hereby submit for the Committee's consideration requesting that the company UFD - which is the main agent responsible for the supply of electricity in the affected Sectors and therefore directly affected by the adoption of the immediate measure to enable the electricity supply requested - to submit any arguments it deems appropriate in the present procedure and to provide all the information requested for this purpose.

16. According to information provided by the Madrid Regional Government's Commissioner concerning Cañada Real Galiana, for years the residents of the shantytown have been consuming electricity obtained illegally, generally through illegal connections or "hook-ups" to the distribution network along the route³.

Such 'hook-ups' are reportedly normally made by connecting a wire directly to the overhead wires of the medium-voltage electricity supply that runs along the public highway⁴.

³ A report by the Government Commissioner for Cañada Real Galiana dated 18/01/2022 is provided as Annex 1.

⁴ This wire, once connected to the distribution network, is taken to a "clandestine" transformer, which is neither installed nor authorised by the distribution company. From the transformer, in turn, a series of

17. It should be noted that the manipulation of the distribution network elements to make such illegal connections - in many cases in a precarious manner - and the obtaining of electricity in this way, in addition to posing serious safety problems which will be referred to below⁵, may amount to a criminal offence (namely, electricity fraud as defined in the Spanish Criminal Code⁶). Such situation is often difficult to control, and as a result the electricity distribution company has filed a number of complaints.

5.2 On power outages in October 2020

18. In the second half of 2020, the consumption of illegally obtained electricity in Sectors 5 and 6 increased substantially, increasing by 40% on average in June, July and August compared to 2019, and in September 2020 consumption increased by up to 70% compared to the same month in 2018, according to the information provided by the distribution company.

19. The reasons for this increase, according to various official reports⁷ are mainly - or in conjunction with other factors - due to the growth of marijuana plantations or other prohibited substances in the area, facilities that require a high consumption of power.⁸

low-voltage wires run to the interior of the dwellings, and the various appliances that consume electricity are then connected to the wires.

⁵ As reflected in the Report on the electricity supply situation in Cañada Real Galiana issued by the Directorate General for Decarbonisation and Energy Transition of the Community of Madrid on 19/05/2022, the connections are "irregular, unregulated and dangerous", not complying "with regulatory safety requirements" and causing "situations of serious and very serious risk to people, things or the environment".

⁶ Article 255 of the Criminal Code

⁷ In this regard, among others, the Report of the Government Commissioner for Cañada Real Galiana of 18/01/2022 explains that "the massive demand for electricity" in October 2020, "related to the cultivation of prohibited substances in Sectors 5 and 6", led to the activation of the automatic protection mechanisms of the general distribution line (Rivas 703), which are intended to protect people and installations from overloads and overcurrents."

⁸ https://www.elconfidencial.com/espana/madrid/2020-10-15/nuevo-golpe-narcotrafico-droga-canada-real-madrid-macrooperativo-marihuana-policia-nacional_2789956/
https://www.elplural.com/sociedad/cultivo-ilegal-marihuana-causante-corte-luz-canada-real_250792102
Recently, in March 2022: <https://elpais.com/espana/madrid/2022-03-28/desarticulada-en-la-canada-real-una-red-que-cultivaba-17500-plantas-de-marihuana-alrededor-de-la-casa-del-cabecilla.html>

20. Regardless of the specific reasons for the exponential increase in consumption, the reality, according to the information provided by the electricity distribution company, is that the average consumption per dwelling in Sectors 5 and 6 of Cañada in October 2020 was seven times higher than the average consumption of a dwelling in Spain⁹.
21. As a consequence of overloads caused by consumption, from October 2020 in Sectors 5 and 6 the protection mechanisms of the power lines started to act - automatically - interrupting the supply in case of overload in order to prevent damage to people, buildings and installations¹⁰.
22. This situation meant that all the buildings and installations located in both Sectors, including the neighbours who until then had been receiving electricity on a stable basis - despite not having legal title to it but obtaining it through illegal connections - stopped receiving power when the protection mechanisms "triggered".

⁹ In the Report of 30/12/2020 of *UFD DISTRIBUCIÓN DE ELECTRICIDAD, S.A.* on the reasons for the electricity supply interruptions in Sectors 5 and 6 of the Cañada Real Galiana, it is explained that considering the approximately 1,450 buildings in Sectors 5 and 6, the average annual consumption is 20,000 k-Wh/building or if we consider the 1,240 families that, according to the Administration, live in these buildings, the annual consumption amounts to 23,185 kWh/family, when the average consumption of a household in Spain, according to data published by Red Eléctrica de España, is 2,992 kWh/year.

¹⁰ The Report of 30/12/2020 of *UFD DISTRIBUCIÓN DE ELECTRICIDAD, S.A.* on the reasons for the electricity supply interruptions in Sectors 5 and 6 of Cañada Real Galiana explains the following:

“In the summer of 2020, consumption began to be considerably higher than usual. This increase in consumption led to automatic switch openings due to network overload, to the point, around the beginning of October, when the electricity supply could not be restored normally.

To avoid these continuous openings of the head-end switch since the summer of 2020, two recloser-switch disconnecter devices have subsequently been installed on each of the branches of the RV-703 line that go to Sector 5 and Sector 6, which act before the head-end switch, preventing tripping in the substation and possible faults that would cause power cuts in the municipality of Rivas, without going into the serious consequences this would have for the distribution network in the area.

These devices also allow, on the one hand, overloads on some branches not to affect the supply of others and, on the other, remote action with multiple attempts to restore the supply on a daily basis, so that the response capacity is much faster and safer, avoiding the manual manoeuvre that had to be carried out with police accompaniment.”

5.3 Situation after the power outages in October 2020

23. In **Sector 5**, the overloads that triggered the activation of the protection mechanisms ceased to occur at the end of 2020-early 2021, apparently as a result of coordinated action by neighbours to rationalise electricity consumption in this area.

As a result, both the Cañada Real Galiana Commissioner of the Self-governing Community of Madrid and the distribution company reported that **except for occasional situations of power supply interruption due to occasional overloads, the electricity supply in Sector 5 has been operating continuously and stably since at least February 2021¹¹.**

24. In **Sector 6**, the power supply situation is very different, as overloads have been occurring continuously in this area since October 2020.

25. As reported by the Commissioner and the distribution company, from October 2020 until 5 March 2022 the company has been trying to reactivate the supply twice a day. Such attempts, however, have been unsuccessful, due to the fact that the high energy demand leads to the immediate activation of the protection mechanisms in case of overload.

26. According to the communications submitted by the company to the Investigative Court no. 10 of Madrid, since 5 March 2022 they have stopped trying to reactivate the supply of electricity in Sector 6.

5.4 Public authorities' response to the power outages in October 2020

27. When the situation of the "power outages" in Sectors 5 and 6 became public in October 2020, the public authorities took various measures of different kinds, including action in three areas:

¹¹ The *Report of the Government Commissioner for Cañada Real Galiana* of 18/01/2022 explains that: "Since February 2021, the residents of Sector 5 began to coordinate in order to rationalise consumption, so that the existing transformer stations in this Sector come into operation alternately, depending on demand. This has ensured that, except for occasional drops, a stable supply of electricity is maintained in this sector."

28. (i) The Directorate-General of Industry, Energy and Mines under the authority of the Self-governing Community of Madrid, by Decision of the Director General of 11/12/2020, ordered the opening of a period of prior information to the company UFD in order to gather the relevant data on the situation of the electricity distribution network in Cañada Real, the existing supply problems and the actions carried out by the distribution company in the exercise of its functions, in order to verify whether the obligations established by the current regulations were being adequately fulfilled by the distribution company.

On 9/06/2021, the then Subdirector General for Energy and Mines submitted a report stating, among other aspects, the existence of numerous illegal connections and a progressive increase in the energy injected into the grid since May 2020 compared to the previous year. These connections - which did not comply with the minimum regulatory safety requirements - caused serious and highly serious risks to people and property and to the environment. It was also found that some of the electrical distribution installations had been illegally occupied by buildings, to the point of making them inaccessible without respecting the legal rights of access, with safety problems so that the mandatory maintenance work can be carried out safely by the distribution company's personnel. It was found that the quality and continuity levels of power supply to customers with contracts were not in line with regulations, as they were affected by the aforementioned circumstances that caused tripping due to overloads, as a result of instantaneous demands that exceeded the admissible levels established in the protections or due to actions by third parties.

Document no. 2 "*Report on the power supply situation in Cañada Real Galiana signed by the current Directorate-General for Decarbonisation and Ecological Transition*" dated 19/05/2022 is attached, which among other points explains the actions carried out to investigate the incident and the outcome of the report issued to that effect at the relevant time.

29. (ii) Since November 2020, intense public security activity has been deployed in order to detect and dismantle marijuana plantations in Cañada Real Galiana, in particular in Sectors 5 and 6, implementing an "**emergency**

programme” by the Government Delegation in Madrid, in coordination with the National Police and the local police.

As a result of such "emergency programme", which is still underway at present, a number of specific operations have been carried out to detect and dismantle numerous constructions intended for indoor marijuana cultivation - generally with complex electrical installations fraudulently supplied, and with their own generators in case the connection to the distribution network is lost.

Thus, among the most recent operations, three of them carried out in March and April 2022 should be highlighted, in which several buildings and dwellings dedicated (either partially or entirely) to marijuana cultivation were detected. As a result, in the first operation 12 people were arrested and 973 plants were seized; in the second, 28 people were arrested and 11,305 plants were seized; and in the third operation, 3 people were arrested and 479 plants were seized.

30. (iii) Different specific measures have been adopted by the Administrations concerned with competences in social matters -mainly the Self-governing Community of Madrid and City Councils- to deal with the situation arising from the lack of power supply in Sector 6. These measures will be discussed below.

31. It is worth stressing two aspects in relation to the lack of power supply in Sector 6 since October 2020:

(i) The protection mechanisms that cause a power failure in the area are automatically activated. The lack of power supply in Sector 6, contrary to the complainants' complaint, is not due to the conduct of the distribution company, nor is it the result of a specific decision taken by the company to cease supplying electricity in that Sector, but is due to a purely technical issue, such as the overloading of the network as a result of excessive consumption.

Furthermore, according to the information provided by the Government Commissioner and the distribution company, the latter

has been trying to re-establish electricity in Sector 6 every day on two occasions, from October 2020 to March 2022, but this has not been possible due to the constant overload in the use of the network in this Sector¹².

- (ii) In any case, it should be borne in mind that, even if these protection mechanisms were not activated, and with the exception of legal power supply contracts, residents of Sector 6 would be obtaining electricity - as in Sector 5 - through illegal mechanisms that endanger the safety of people and property. Therefore, in any case it would be appropriate to adopt the necessary measures to prevent the supply of energy which, based on illegal and precarious installations and connections, would endanger that safety.

II. INADMISSIBILITY FOR THE COMMITTEE TO ADOPT THE REQUESTED IMMEDIATE MEASURES

1. The immediate measures requested are in line with the merits of the complaint

32. The Spanish State considers that the issue raised by the complainants requesting the adoption - under Article 36 of the Rules of the Committee - of measures to prevent serious and irreparable damage to the residents in Sectors 5 and 6 of Cañada Real, and in particular, to provide access to electricity for that population, can only be assessed after a detailed examination of the merits of the complaint.

33. In fact, what is being requested as an immediate measure coincides with the core issue that constitutes the merits of the complaint. The complainants

¹² According to the *Report of the Government Commissioner for Cañada Real Galiana* of 18/01/2022 "In Sector 6 it has been impossible to achieve a similar situation [to that of Sector 5] despite the fact that **the distribution company (UFD-Naturgy) tries to reactivate supplies twice a day. In other words, as long as there is no decrease in the demand for energy in Sector 6, which is what prevents the re-establishment of supply, the current situation will continue.** Therefore, the urgent solution will depend on the behaviour of the residents of this sector in their electricity consumption habits."

state that Sectors 5 and 6 of Cañada Real should have access to power supply, requesting a declaration of violation by the Spanish State of the right to decent housing recognised in Article 31 of the Revised European Social Charter, together with other rights enshrined in the same instrument, as a consequence of the (alleged, in the case of Sector 5) lack of power supply in Sectors 5 and 6 of Cañada Real since October 2020.

34. As noted above, in order to assess, as a whole, the reasons why the inhabitants of Sector 6 of Cañada Real do not currently have access to power supply through the electricity distribution network, the different circumstances involved, and the actions of both the electricity distribution company and the authorities at different levels, it is necessary to carry out a detailed and in-depth examination of the merits of the complaint. Therefore, it is not appropriate to adopt a measure such as the one requested in order to enable access to power supply - which, moreover, would imply imposing a direct supply obligation on a private company, unrelated to this complaint.

2. Failure to meet the factual requirement of immediate emergency

35. The Committee has underlined that immediate measures can only be ordered exceptionally, when they are necessary to avoid the risk of serious irreparable harm and to ensure effective respect for the rights recognised in the European Social Charter.

36. In the present case, the complainants substantiate the "exceptional character" of the immediate measures they request (§ 445) by considering that, in winter, conditions are particularly harsh in Sectors 5 and 6 of Cañada Real, due to extremely low temperatures, which make power supply - in particular heating - essential for the inhabitants of those Sectors.

37. The purpose of the request, as stated, is to ensure that in the winter of 2021-2022 the situation that occurred during the winter of 2020-2021 is not repeated. In this regard, the particularly serious situation experienced during the winter of 2020-2021 is described, as indicated in § 458, and

states that if those immediate measures requested are not adopted, the pathologies reported in the previous winter may be repeated in the winter of 2021-2022 or even worsen, pointing to an increase in respiratory infections, dermatological and circulatory diseases related to the cold, or complications in patients with diabetes or rheumatic diseases, among others.

38. Given that the winter period has now passed, the urgency and exceptionality requirements - particularly adverse weather conditions making heating essential - on which the request is based are not met.

39. Furthermore, the complaint is based on certain circumstances that occurred in the winter of 2020-2021. However, it should be pointed out that on those dates, and in January in particular, an extraordinary situation arose in Madrid. Between 6 and 10 January 2021, the meteorological phenomenon known as the storm "Filomena" occurred. It produced strong wind storms, rain and heavy snowfall in many Spanish inland areas. In the Self-governing Community of Madrid there was a heavy snowfall, described by the State Meteorological Agency as "historic", accumulating up to 50 cm of snow in Madrid City and other central and eastern areas.

3. Existence of a number of domestic court rulings rejecting the reactivation of the electricity supply requested as an immediate measure.

40. The situation of Cañada Real in Sectors 5 and 6, and specifically the lack of power supply and the illegal "hook-ups" by certain users that were the subject of the immediate measure requested by the complainants, has been and continues to be subject to review by domestic courts.

41. Therefore, any decision by the Committee on the immediate measures requested, and within the margin of appreciation enjoyed by domestic authorities to protect the rights and interests in conflict in accordance with the principle of subsidiarity, cannot disregard those judicial decisions, insofar

as they have examined precisely the purpose of the immediate measure requested, i.e. the restoration of the power supply.

42. The main court proceedings conducted in the matter are detailed below.

➤ **Pre-trial Proceedings no. 2163/2020 of the Investigative Court no. 42 of Madrid on the presumed perpetration of an offence of coercion.**

43. According to the information that this party has been able to obtain, the aforementioned procedure stems from a complaint filed in December 2020 by a cultural association operating in Cañada Real Galiana, against the electricity distribution company - UFD.

44. On 13/01/2021 the court agreed to the temporary stay of proceedings and its subsequent closure, since the power outage and the consequences derived from them were not attributable to the distribution company, as they were the result of the overloads produced by the illegal connections to the electricity grid carried out by residents of the affected Sectors. According to the Order, although massive fraud in the electricity distribution network had been occurring for years, it was from the last few months of 2020 onwards that the overloads had occurred "due to illegal and uncontrolled connections and manipulation of the network, which has produced and continues to produce an overload that causes the protection mechanisms of the power lines to act automatically interrupting the supply".

45. The Order to provisionally stay the proceedings was appealed.

On 26/05/2021, the appeal was decided by the Provincial Court of Madrid (section 16), partially upholding it with the aim to contrast or verify by an impartial expert appointed by the Investigative Court a certain report issued by the entity *UFD Distribución Eléctrica SA*, which had been taken into account by the said court.

➤ **Complaints filed by the distribution company after the power outage suffered in October 2020.**

46. Given the dangerous conditions of electrical facilities in Sectors 5 and 6, the company UFD has filed several complaints, pointing out the illegal manipulation of the electrical installations in the distribution network that crosses Sectors 5 and 6 – the distribution company being responsible for its maintenance and servicing -, the existence of numerous illegal connections, theft and damage to the company's installations, and the fraudulent use of power.
47. It is worth highlighting the proceedings brought before the **Investigative Court no.10 of Madrid** by UFD, which filed a complaint in November 2020 for power fraud, requesting authorization from the court to disconnect the illegal connections.
48. The complaint gave rise to the Pre-trial Proceedings no. 2093/2020, which were later joined by two lawyers' associations (*ADADE* and *ALA*).
49. On 27/11/2020, an order was issued ordering the temporary stay of proceedings and the file of proceedings, due to the lack of a known perpetrator of the criminal acts reported. It furthermore ordered the disconnection of the illegal connections in Sectors 5 and 6, transferring the matter to the competent authorities in order to address the problems derived from this measure affecting the vulnerable residents in those Sectors.
50. Such order was appealed. On 8/02/2022, the Provincial Court dismissed the appeal.
51. The distribution company then communicated to the Investigative Court no.10 that, as of 5/03/2022, they would “stop trying to re-establish the voltage in the electricity network that feeds the illegal connections in Sector 6” - a Sector in which, since October 2020, there had been no power supply as a result of the constant activation of the overload protection mechanisms. With regard to Sector 5, where the illegal connections, unlike Sector 6, had been supplied with power in a more or less continuously manner- but for occasional incidents – because of the potential consequences for the

residents in that area, requested the Court to inform Social Services prior to the said disconnection.

52. On 18/05/2022, the court ordered the disconnection of the illegal connections in Sectors 5 and 6 within 3 months.

➤ **Contentious-administrative proceedings against the Self-governing Community of Madrid for alleged inactivity**

53. According to the information gathered, in January 2021 a family residing in Sector 5 of Cañada Real, acting individually, filed a writ before the High Court of Justice of Madrid requesting the adoption of precautionary measures *inaudita parte*, prior to the filing of a contentious-administrative appeal for the protection of fundamental rights for inactivity on the part of the Self-governing Community of Madrid. They claim that, in their view, the Autonomous Administration should order the distribution company to re-establish the power supply to their dwelling or, should this not be possible for technical reasons, the company should immediately proceed to install generators or any other viable solution of a similar nature.

54. On 5/01/2021 the High Court of Justice rejected the request for precautionary measures, on the grounds that there was no indication that the Self-governing Community of Madrid was failing to comply with a specific obligation imposed by the law to act in the direction sought by the appellant.

4. Currently there is no infrastructure for the distribution of electricity in the area that meets the safety conditions to provide service to all residents in Sectors 5 and 6

55. According to the competent authorities, no infrastructures exist in Sectors 5 and 6 of Cañada Real that would allow the power supply to all the illegally constructed buildings or dwellings located in this area that meet the required safety conditions.

56. Thus, according to the reports gathered, it is technically impossible to immediately implement - as the complainants claim - a measure such as the one requested, consisting of "ensuring that all affected persons - i.e. the inhabitants of Sector 6 of Cañada Real - have access to power supply and heating in their homes located in those Sectors."

57. As has been pointed out, the residents of Sector 6 of Cañada Real - with the exception of the five "legal" customers with a supply contract - have been obtaining electricity through illegal connections and installations, which do not meet the conditions required by the technical regulations to guarantee their safety, thereby posing a serious risk to people and buildings (risk of fire or electrocution both inside and outside the dwellings).

58. On 15 January 2021 a **report was issued by an independent accredited control body** (*Applus Norcontrol*), commissioned by UFD, on the assessment of the safety conditions and compliance with technical industrial safety regulations of the electrical installations in Cañada Real, Sectors 5 and 6, finding the following:

"8.1 CONCLUSION

The main evidences that we have been able to prove in the detailed assessment of the RVS703 line in Sectors 5 and 6 are as follows:

- The buildings in the vicinity of the line invade, and in many cases completely invade, the line's easement zone, compromising the minimum safety distances.*
- There are a multitude of technically deficient illegal connections directly on the RVS703 line, most of them in areas that are inaccessible because they are inside buildings.*
- There are also a multitude of other voltage lines in the area, which are totally unregulated and in many cases represent obvious situations of serious safety risk.*
- The situation of uncontrolled settlements in the area can and does vary constantly, and as far as the electricity supply is concerned, it can change practically from one day to the next, due to the ease with which connections are made.*

On the basis of this evidence and the requirements of the various regulations and standards, we conclude that:

- *The situation represents a serious safety risk.*
- *Proper operation and maintenance of the line is impossible.”*

The said report is attached as Document no. 3.

5. Social and welfare measures taken by the authorities to alleviate the lack of power supply in the affected areas

59. The complainants request that all possible measures be adopted, as "immediate measures", to avoid serious irreparable damage to the life and physical and moral integrity of the population of Sectors 5 and 6 of Cañada Real.

60. Access to electricity cannot be provided for the reasons given above. The public authorities are acting effectively by adopting a wide range of measures to improve the conditions of the families in Cañada Real, in general; and in particular, an intense activity has been carried out to prevent the damage caused by the lack of access to electricity in the population of Sector 6, -we insist, Sector 5 has electricity, contrary to the claimants' claims- especially among the most vulnerable population, and particularly during the winter months, as explained in the report prepared by the Madrid City Council and also in the report submitted by the Commissioner of Cañada Real Galiana under the authority of the Self-governing Community of Madrid, which we provide as Documents nos. 4 and 5.

61. With regard to the protective measures to mitigate the adverse effects of the power outages in Sector 6, from the outset it should be borne in mind that, as noted above, given the special circumstances in such Sector, the authorities have taken the decision - as set out in the Regional Agreement- to dismantle Sector 6. Thus, a process has been initiated in order to reach

the complete dismantling of this Sector, and the relocation of the families in vulnerable situations living in this Sector.

At the meeting of the Executive Committee of the Regional Agreement held on 16 November 2021, a roadmap was established with 21 measures to promote compliance with such Regional Agreement.

This roadmap, in addition to promoting the implementation of the aforementioned rehousing and social integration agreements, includes an offer from the Secretary of State for the 2030 Agenda to allocate 5 million euros for rehousing, which has been embodied in the approval of Royal Decree no. 1058/2021, of 30 November, for the direct granting of subsidies to the City Councils of Madrid and Rivas Vaciamadrid, with a credit of 5 million euros for rehousing programmes in Sectors 4, 5 and 6, with 70% of the credit going to re-housing in Sectors 5 and 6.

In order to promote and properly coordinate the re-housing programmes, in November 2021 a Commission on re-housing was created, with the involvement of, among others, the Self-governing Community of Madrid, the Ministries of Transport, Mobility and Urban Agenda and that of Social Rights and Agenda 2030, and the City Councils of Madrid and Rivas Vaciamadrid. The last meeting was held on 5 May 2022, aiming to address a joint re-housing action for Sectors 3 to 6 of Cañada Real over a period of 5 to 8 years.

62. Several measures have been adopted In order to provide assistance until the relocation of the families in Sector 6 has been completed.

Thus, the Madrid City Council and the Self-governing Community of Madrid, in collaboration with a number of social entities (*Red Cross, Caritas, La Parroquia, El fanal, Asociación Barró* and *Fundación Secretariado Gitano*) have organised, among other measures, the implementation of a municipal laundry service, the distribution of firewood, catalytic cookers and butane bottles.

Moreover, through an agreement signed between Madrid City Council and *Cáritas Diocesana* of Madrid, a grant of 300,000 Euros has been approved

in favour of this organisation for the development of the programme headed "Financing the adoption of measures to alleviate the social emergencies that may arise from the power supply problems in Cañada Real". The aim of this project is to guarantee coverage of basic health, accommodation and food needs, to promote minimum lighting conditions that allow young people and minors to continue their studies and to contribute to the improvement of health conditions by providing the necessary resources.

63. Furthermore, it is worth highlighting the adoption of specific measures by the internal authorities to address special social emergency situations for families living in areas affected by the lack of power supply.

Thus, for instance, concerning the family of the Moroccan minor L.H., who suffered from serious health problems affected by the lack of adequate accommodation - in particular, her treatment required an electricity-powered oxygen machine that had not been working properly since October 2020 – by a Decision of 19/01/2021, the Directorate-General for Housing and Rehabilitation under the authority of the Self-governing Community of Madrid urgently agreed on the immediate allocation of a public dwelling to the family unit comprising the minor, her parents and her two siblings. The dwelling was allocated through the extraordinary "social emergency" procedure under the regime scheme in the district of Carabanchel (Madrid), first for a period of 6 months, extendable for a further 6 months, and then definitively - Decision of 24/01/2022.

Such Decisions are attached as Document no. 6.

64. Finally, it is necessary to expressly mention the specific measures adopted by the Administrations when the Storm Filomena occurred in January 2021, to which we referred above in the present observations and was also referred to in the collective complaint. As stated in the Madrid City Council report, some of these measures were the installation of accommodation and maintenance facilities, one of them located in Sector 6, a daily convoy formed by the Emergency Services of the Madrid City Council was sent to the families, as well as the sending of cookers, blankets and the distribution of food and water to alleviate the effects of this extraordinary circumstance.

III. TO CONCLUDE

With regard to the request for individual measures made by the complainants, the Kingdom of Spain considers that it is not appropriate for the Committee to indicate such measures, given that:

- Insofar as the measures requested essentially coincide with the substance of the complaint, and taking into account the huge social and legal complexity of the settlements in the different areas of Cañada Real, a decision to adopt immediate measures such as the one requested cannot be taken without a thorough and detailed study by the Committee of all the circumstances involved, which will be carried out in the observations on the merits.
- In any case, and according to the reports provided, it is impossible from a technical point of view to provide electricity to dwellings that do not have the legal permits or the necessary infrastructure, without seriously endangering the integrity and lives of the occupants of these dwellings.
- In addition, as of the date of the present observations, the exceptional circumstances justifying the adoption of a measure such as the one requested do not exist.
- There are various internal judicial pronouncements in relation to Sectors 5 and 6 of Cañada Real, in particular an Order from the Investigative Court no. 10 of Madrid, against the requested measure to re-establish the power supply.
- The various competent Spanish public Administrations have undertaken a number of social, health and educational actions to mitigate the impact of the lack of power supply in Sectors 5 and 6 of Cañada Real. In particular, appropriate rehousing mechanisms have been implemented in Sector 6 for vulnerable population and families in a situation of severe exclusion living in this specific Sector.



Madrid for Strasbourg, 31 May 2022

Agent of Spain before the ECSS

Co-agent of Spain before the ECSS

Alfonso Brezmes Martínez de Villarreal

Heide Nicolás Martínez