



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

Confidential¹

Conference of European Churches (CEC) v. the Netherlands

Complaint No. 90/2013

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 1 July 2014

¹ It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 10 November 2014.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints (“the Protocol”), the European Committee of Social Rights, a committee of independent experts of the European Social Charter (“the Committee”) transmits to the Committee of Ministers its report² on Complaint No. 90/2013. The report contains the Committee’s decision on the merits of the complaint (adopted on 1 July 2014), the decision on admissibility (adopted on 1 July 2013) and the decision on immediate measures (adopted on 25 October 2013) are appended.

2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.

3. The Committee’s procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session, on 10 May 2011 at its 250th session, on 28 June 2011 at its 251st session, on 12 September 2013 at its 266th session and on 6 December 2013 at its 268th session,

4. The report has been transmitted to the Committee of Minister on 9 July 2014. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 10 November 2014.

² This report may be subject to editorial revision.

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

DECISION ON THE MERITS

Adoption: 1 July 2014

Notification: 9 July 2014

Publicity: 10 November 2014

Conference of European Churches (CEC) v. the Netherlands

Complaint No. 90/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 272nd session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Jarna PETMAN
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 13 May and 1 July 2014,

On the basis of the report presented by Luis JIMENA QUESADA,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint submitted by the Conference of European Churches (CEC) ("CEC") was registered on 17 January 2013. It was communicated to the Government on 7 February 2013.

2. The complainant organisation alleges that in the Netherlands, the relevant legislation and practice concerning irregular adult migrants are in violation of Article 13§4 (right to social and medical emergency assistance) and Article 31§2 (right to housing) of the European Social Charter ("the Charter").

3. On 8 February 2013, a request was made by CEC that precedence be given to the complaint in accordance with Rule 26 *in fine* of the Rules of the Committee ("the Rules").

4. In accordance with Rule 29, paragraph 1 of the Rules, on 22 March 2013, the President of the Committee asked the Government of the Netherlands ("the Government") to make, before 3 May 2013, written observations on the admissibility of the complaint.

5. The Government's submissions on the admissibility were registered on 3 May 2013.

6. On 1 July 2013, the Committee declared the complaint admissible, without acceding to the complainant organisation's request to give priority to the complaint. It also decided not to hold a public hearing in this case. On 5 July 2013, the admissibility decision was communicated to the parties and the Government was simultaneously invited to make written submissions on the merits of the complaint by the time-limit of 27 September 2013.

7. On 5 July 2013, referring to Article 7§1 of the Protocol providing for a system of collective complaints ("the Protocol"), the Committee invited the States Parties to the Protocol, having made a declaration in accordance with Article D§2 of the Charter, to transmit to it any observations they may wish to make on the merits of the complaint before 27 September 2013.

8. No such observations were received.

9. On 20 June 2013, the complainant organisation made a request for immediate measures in accordance with Rule 36§1 of the Rules. On 17 July 2013, the Government was asked to make written submissions on the request no later than 6 September 2013.

10. The Government's submissions on the request for immediate measures were registered on 2 September 2013.

11. The Government's written observations on the merits were registered on 27 September 2013. On 13 November 2013, CEC submitted its reply to the Government's submissions.

12. On 25 October 2013, the Committee decided to invite the Government to adopt immediate measures. The decision was communicated to the parties on 29 October 2013.

13. On 3 December 2013, the President of the Committee agreed to the request by the Government to submit a further response on the merits of the complaint within the time-limit of 3 February 2014. The response was registered on 30 January 2014.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

14. The complainant organisation asks the Committee to find that the right of undocumented adult migrants to food, clothing and shelter has not been respected, in violation of Article 13§4 and 31§2 of the Charter.

B – The respondent Government

15. The Government primarily maintains that the persons at concern in the current complaint, namely foreigners staying within the territory of the Netherlands in an irregular manner, do not fall within the scope of application of the Charter. The complaint should accordingly be dismissed.

16. It subsidiarily rejects the complainant organisations' assertions in their entirety and asks the Committee to declare the complaint unfounded in all respects.

RELEVANT DOMESTIC LAW AND PRACTICE

17. The contested provisions of the domestic law are set out in the Aliens Act 2000 (*Vreemdelingenwet 2000* of 23 November 2000; translation by the Office for Democratic Institutions and Human Rights (ODIHR) Documentation Center; available at <<http://www.legislationline.org/documents/id/4680>>).

18. According to Section 5§1 of the said Act,

“An alien who has been refused entry into the Netherlands shall leave the Netherlands immediately, duly observing such directions as may have been given to him for this purpose by a border control officer.”

19. Lawful residence in the Netherlands is defined in Section 8 of Aliens Act 2000 in the following terms:

“An alien is lawfully resident in the Netherlands only:

- a) on the ground of a residence permit for a fixed period as referred to in section 13;
- b) on the ground of a residence permit for an indefinite period as referred to in section 18;
- c) on the ground of a residence permit for a fixed period as referred to in section 26;
- d) on the ground of a residence permit for an indefinite period as referred to in section 31;
- e) as a Community citizen as long as this citizen is resident on the grounds of an arrangement under the Treaty establishing the European Community or the Treaty establishing the European Economic Area;
- f) pending a decision on an application for the issue of a residence permit as referred to in sections 14 and 28 in circumstances where, by or pursuant to this Act or on the ground of a judicial decision, expulsion of the applicant should not take place until the decision on the application has been given;
- g) pending a decision on an application for the issue of a residence permit as referred to in sections 20 and 33 or for the renewal or alteration of a residence permit as referred to in sections 14 and 28 in circumstances where, by or pursuant to this Act or on the ground of a judicial decision, expulsion of the applicant should not take place until the decision on the application has been given;
- h) pending a decision on a notice of objection, review or appeal, in circumstances where, by or pursuant to this Act or on the grounds of a judicial decision, expulsion of the applicant should not take place until the decision on the notice of objection or notice of appeal has been given;
- i) during the ‘free period’ referred to in section 12, as long as the residence of the alien is permitted by or pursuant to section 12;
- j) if there are obstacles to the expulsion as referred to in section 64;
- k) during the period in which an alien is given the opportunity by Our Minister to lay an information about an act constituting an offence under article 250a of the Criminal Code;
- l) if the alien has a right of residence pursuant to Association Decision 1/80 of the EEC/Turkey Association Council.”

20. Section 10 of the Aliens Act 2000 provides as follows:

“1. An alien who is not lawfully resident may not claim entitlement to benefits in kind, facilities and social security benefits issued by decision of an administrative authority. The previous sentence shall apply mutatis mutandis to exemptions or licenses designated in an Act of Parliament or Order in Council.

2. The first subsection may be derogated from if the entitlement relates to education, the provision of care that is medically necessary, the prevention of situations that would jeopardise public health or the provision of legal assistance to the alien.

3. The granting of entitlement does not confer a right to lawful residence.”

21. Section 45 of the said Act provides the following on the legal consequences of a rejection of an application for a residence permit in the Netherlands:

“1. The consequences of a decision whereby an application for the issue of residence permit for a fixed period [...] or a residence permit for an indefinite period [...] is rejected shall, by operation of law, be that:

(a) the alien is no longer lawfully resident [...];

(b) the alien should leave the Netherlands of his own volition within the time limit prescribed in section 62, failing which the alien may be expelled;

(c) the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or another statutory provision that regulates benefits in kind of this nature will terminate in the manner provided for by or pursuant to that Act or statutory provision and within the time limit prescribed for this purpose;

(d) the aliens supervision officers are authorised, after the expiry of the time limit within which the alien must leave the Netherlands of his own volition, to enter every place, including a dwelling, without the consent of the occupant, in order to expel the alien;

(e) the aliens' supervision officers are authorised, after the expiry of the time limit referred to in (c), to compel the vacation of property in order to terminate the accommodation or the stay in the residential premises provided as a benefit in kind as referred to in (c).

2. Subsection 1 shall apply mutatis mutandis if:

[...]

(b) A residence permit has been cancelled or not renewed.

3. The consequences referred to in subsection 1 shall not take effect as long as the application for review lodged by the alien suspends the operation of the decision.

4. Our Minister may order that, notwithstanding subsection 1, opening words and (c), the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or another statutory provision that regulates benefits in kind of this nature will not terminate for certain categories of alien. The order shall be repealed no later than one year after its notification.

5. An alien to whom an order as referred in subsection 4 is applicable shall be deemed to be lawfully resident as referred to in section 8 (j).”

22. From 1 January 2014 onwards, Section 8 of the Social Support Act (*Wet Maatschappelijke Ondersteuning*; Stb. 2006, 351; "WMO") reads as follows:

“1. An alien can only be eligible for individual assistance, women's shelter services or a payment as referred to in section 19a if he is lawfully resident within the meaning of section 8, subsection (a) to (e) inclusive and (l) of the Aliens Act 2000.

2. An alien can only be eligible for community shelter services if he is lawfully resident within the meaning of section 8, subsection (a) to (e) inclusive and (l) of the Aliens Act 2000, except in cases referred to in article 24, paragraph 2 of Directive 2004/38/EC.

3. Notwithstanding subsections 1 and 2, in cases designated by order in council, if necessary notwithstanding section 10 of the Aliens Act 2000, categories of aliens residing unlawfully in the Netherlands specified by or pursuant to that order may be wholly or partially eligible for assistance specified by that order or for a payment as referred to in section 19a. Eligibility for assistance or a payment as referred to in section 19a does not confer any right to lawful residence on an alien.

4. The order referred to in subsection 3 may provide that the municipal executive is responsible for delivering the assistance designated by that order.”

RELEVANT INTERNATIONAL MATERIALS

I. The Council of Europe

23. The European Convention of Human Rights (“the Convention”) includes the following provision:

“Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

24. The European Court of Human Rights (“the Court”) has made the following observations with regard to the situation of migrants in an irregular situation in the Netherlands (*Fatma Afif v. the Netherlands*, admissibility decision of 24 May 2011, §32):

“If no residence permit is granted to an asylum seeker, he/she will remain entitled to benefit from the reception facilities for asylum seekers for a period of four weeks after the date of the final decision taken on his/her request. During this period, the person concerned is to seek ways – if need be assisted by the International Organisation for Migration – to leave the Netherlands voluntarily as he/she is no longer lawfully staying in the Netherlands and under a legal obligation to leave. After the expiry of this period, access to reception facilities is automatically terminated without a specific decision. Nevertheless, an alien in such a situation may request COA for continued reception facilities. In case highly exceptional circumstances so require, COA can take a decision to that effect [...]”

25. Pursuant to established case-law of the Court, it is the Contracting States’ right, “as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens” (e.g. *Moustaquim v. Belgium*, judgment of 18 February 1991, §43).

26. Article 3 of the Convention does moreover not entitle irregular aliens to claim a right to remain in the territory of a State Party in order to continue to benefit from medical, social or other forms of assistance and services (*N. v. the United Kingdom*, judgment of 27 May 2008 [Grand Chamber], §29).

27. In *M.S.S. v. Belgium and Greece* (judgment of 21 January 2011), it was further recalled that Article 3 could not be interpreted as obliging the States Parties to provide everyone within their jurisdiction with a home. Nor did it entitle refugees to financial assistance enabling them to maintain a certain standard of living (§ 249, referring to *Chapman v. the United Kingdom*, judgment of 18 January 2001 [Grand Chamber], §99; *Müslim v. Turkey*, judgment of 26 April 2005, §85).

28. Expulsion of an irregular migrant may however amount to inhuman treatment in very exceptional circumstances, where, among other requirements, no basic level of food, shelter or social support would be available to the applicant in the receiving State (N. v. the United Kingdom, cited above, §§ 42, 44). In M.S.S. v. Belgium and Greece, the combined effect of the applicant's unacceptable living conditions, the prolonged uncertainty of the situation and the total lack of prospects for improvement of the situation were considered to have attained the level of severity required for a violation on grounds of inhuman and degrading treatment (cited above, §263).

29. The Court has furthermore not excluded "the possibility that the responsibility of the State may be engaged in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity" (M.S.S. v. Belgium and Greece, cited above, §253. Also O'Rourke v. the United Kingdom, decision of 26 June 2001).

30. The Committee of Ministers of the Council of Europe (Recommendation No. R (2000) 3 of the Committee of Ministers to Member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship (Adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies)) has recommended the Member States to:

"[...] put into practice the principles in [...] this Recommendation in order to recognise, at national level, an individual universal and enforceable right to the satisfaction of basic material needs (as a minimum: food, clothing, shelter and basic medical care) for persons in situations of extreme hardship."

"The exercise of this right should be open to all citizens and foreigners, whatever the latter's position under national rules on the status of foreigners, and in the manner determined by national authorities."

31. More recently, it has held as follows with regard to housing for undocumented migrant children ("Undocumented migrant children in an irregular situation: a real cause for concern" – Parliamentary Assembly Recommendation 1985 (2011); Reply adopted by the Committee of Ministers on 24 October 2012 at the 1153rd meeting of the Ministers' Deputies; CM/AS(2012)Rec1985 final):

"[...] The Committee of Ministers acknowledges the complexity and indeed importance of this question and whilst reiterating the obligation to provide at least a shelter for undocumented migrants in an irregular situation, it considers that the question of housing as such falls to each Member State to address in the framework of their relevant national policies."

32. Resolution 1509 (2006) of the Parliamentary Assembly of the Council of Europe (adopted on 27 June 2006) provides the following with regard to the status of migrants:

“5. The Assembly considers that, as a starting point, international human rights instruments are applicable to all persons regardless of their nationality or status. Migrants in an irregular situation, as they are often in a vulnerable situation, have a particular need for the protection of their human rights, including basic civil, political, economic and social rights.”

“13. In terms of economic and social rights, the Assembly considers that the following minimum rights, inter alia, should apply:

13.1. adequate housing and shelter guaranteeing human dignity should be afforded to migrants in an irregular situation;

[...]

[13.7. all children, but also other vulnerable groups such as the elderly, single mothers and more generally single girls and women, should be given particular protection and attention.”]

33. In its Recommendation 1755 (2006) (adopted on 27 June 2006), the Parliamentary Assembly recommended the Committee of Ministers to:

“3.3. keep under review the effectiveness of the human rights instruments relevant to the protection of the rights of migrants in an irregular situation, in particular the European Social Charter (ETS. No. 35) and the revised European Social Charter (ETS. No. 163), with a view to examining whether there is a need to strengthen the human rights instruments in order to protect the rights of migrants in an irregular situation more effectively.”

II. The United Nations

a. The Universal Declaration of Human Rights

34. Article 25§1 of the United Nations Universal Declaration of Human Rights sets out the following with regard to the universal right to an adequate standard of living:

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

b. The International Covenant on Economic, Social and Cultural Rights

35. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966; entry into force 3 January 1976, United Nations Treaty Series, vol. 993, p. 3; ratified by the Netherlands on 11 December 1978; “the ICESCR”) includes the following provision:

“Article 11

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.

[...].”

36. When interpreting the ICESCR, the Committee on Economic, Social and Cultural Rights of the United Nations considers the right to food to be indivisibly linked to the inherent dignity of the human person, as well as indispensable for the fulfilment of other human rights. Moreover, whenever an individual or a group is unable to enjoy the right to adequate food by the means at their disposal, States Parties have the obligation to provide for the fulfilment of the right (General Comment No. 12; The right to adequate food; E/C.12/1999/5, §§4, 15).

37. Similarly, the Committee on Economic, Social and Cultural Rights considers the inherent dignity of the human person to require that housing should be ensured to all persons and that everyone should be provided with the right to live somewhere in security, peace and dignity (General Comment No. 4; The right to adequate housing; 13/12/1991, §§6, 7).

38. Lastly, the said Committee considers the non-derogable core obligations under the Covenant to include, *inter alia*, the right to access to health facilities, the minimum essential food, basic shelter and essential drugs (General Comment No. 14; The right to the highest attainable standard of health; E/C.12/2000/4 §§43, 47).

III. The European Union

39. Article 151§1 of the Treaty on the Functioning of the European Union ("TFEU") provides as follows on social policy:

"The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

40. Article 153 of the TFEU sets out the following:

"1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

[...];

(j) the combating of social exclusion;

[...]."

41. Article 1 and 34 of the Charter on the Fundamental Rights of the European Union ("the Fundamental Rights Charter") provide as follows:

"Article 1 - Human dignity

Human dignity is inviolable. It must be respected and protected."

"Article 34 - Social security and social assistance

[...]

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.”

42. According to the Explanations relating to the Charter of Fundamental Rights (2007/C 303/02) paragraph 3 of Article 34 of the Fundamental Rights Charter “draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union”.

43. Furthermore, provisions on the minimum standards for the reception of asylum seekers in the European Union are contained in Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States (OJ 2003 L 31, p. 18, “Directive 2003/9”).

44. According to the Directive, the area of freedom, security and justice established by the Union is open to those legitimately seeking protection in the Community (Section 1 of the Preamble).

45. Article 2 of the said Directive reads, *inter alia*, as follows:

“For the purposes of this Directive:

[...]

(i) "reception conditions" shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(j) "material reception conditions" shall mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

[...].”

46. According to the Court of Justice of the European Union, the period when the material reception conditions must be granted to applicants begins when an application for asylum is made by an asylum seeker. A Member State is accordingly obliged to provide the material conditions not only to asylum seekers present in its territory, but also to those awaiting a decision on which Member State will be held responsible for the processing of their application. An applicant moreover retains his/her status as an asylum seeker within the meaning of the Directive as long as no final decision has been taken in their matter (C-179/11, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration*, judgment of 27 September 2012, §§39, 43, 53, 56. Also C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, judgment of 21 December 2011 [Grand Chamber]).

47. The Court of Justice has likewise held that “the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity must be respected and protected, preclude the asylum seeker from being deprived – even for a temporary period [...] – of the protection of the minimum standards laid down by that directive” (C-79/13, *Federaal agentschap voor de opvang van asielzoekers v. Saciri* and others, judgment of 27 February 2014, §35; *GISTI v. Ministre de l’Intérieur*, cited above, §56).

48. Moreover, housing, food and clothing must be provided to those within the scope of application of the directive, either in kind or as financial allowances in order to ensure a dignified standard of living (*Saciri* and others, cited above, §§38, 40).

49. Finally, Article 16 of the Directive authorises the Member States to withdraw the reception conditions in certain cases listed in the Article.

IV. Other international material

50. Information on the reception services offered to asylum-seekers in the Netherlands has been made available in a report by the Asylum Information Database (Asylum Information Database, National Country Report, The Netherlands, May 2013; available at: <http://www.asylumineurope.org/reports/country/netherlands>)

51. According to the report, all asylum seekers are entitled to material reception conditions. An asylum-seeker has the right to accommodation, food and clothes as long as the asylum application is pending (p. 9).

52. The right to reception facilities terminates once an asylum application has been rejected and the responsibility for reception facilities transferred to the Repatriation and Departure Service (“DT&V”) (p. 9).

53. Within what is known as “the short regular procedure” of asylum application, an applicant has the right to accommodation for the period of four weeks once their application has been rejected. The applicant is given this period to leave the Netherlands and is accordingly entitled to reception facilities for the above period only. This is “regardless of whether the asylum seeker appeals the rejection and whether this has suspensive effect due to a granted provisional measure”. If the appeal decision is not issued within four weeks, the applicant must make a further application for an urgent provisional measure in order to maintain the right to reception facilities (pp. 9, 10, 14).

54. Similarly, in an “extended procedure, an appeal must be submitted within four weeks, during which time the applicant maintains their right to accommodation (pp. 10, 14).

55. Applicants, whose applications have been rejected, may be detained on certain conditions. In these cases, reception conditions are provided by the authority in charge of the detention facilities, on condition that the applicant cooperates with the authorities in the organisation of the departure (pp. 19, 35).

56. Once the entitlement to reception conditions ends, the asylum applicant must immediately leave the facility providing the reception conditions (pp. 32, 33).

57. While the asylum application is pending, health care is provided to the asylum seeker. Health care of the same level is also available in the detention centres (pp. 41, 45). Rejected asylum seekers and other migrants in an irregular situation are entitled to health care in cases of medical emergency (p. 41).

58. Rejected applicants with physical or psychological problems severe enough to make travelling impossible may furthermore make an application for the delay of departure under Section 64 of the Aliens Act 2000. The expulsion is suspended for the duration of the severe medical condition and the migrant concerned is granted a right to accommodation (pp. 18, 27).

59. Further details on the level of the reception conditions are provided in the European Migration Network (EMN) Focused Study 2013 (The Organisation of Reception Facilities for Asylum Seekers in Different Member States: The Netherlands, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/). According to it, “asylum seekers in the Netherlands are entitled to a weekly financial allowance for food, clothing and other personal expenses” (p. 13).

60. Pursuant to the study, if a rejected asylum seekers fails to leave the country within the return period of 28 days, “he/she is no longer entitled to reception in one of the asylum seekers’ centres. This does not necessarily mean that he/she ends up on the streets. He/she may be imposed a freedom-restricting measure at a centre with restricted movement or at a family centre if it concerns a family with minors. At these locations, the departure [...] is intensified further for a period of maximum 12 weeks in principle. Families with minors are also offered accommodation after this period, during which assistance is focused on return.” (p. 22).

THE LAW

FIRST PART: ALLEGED VIOLATION OF ARTICLE 13§4 OF THE CHARTER

61. Article 13 of the Charter, for its relevant parts, reads as follows:

“Article 13 – The right to social and medical assistance”

“Part I: Anyone without adequate resources has the right to social and medical assistance.”

“Part II: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

[...]

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

A. APPLICABILITY OF ARTICLE 13§4 TO THE PERSONS CONCERNED BY THE COMPLAINT

62. The Committee observes that the issues raised in the complaint relate to migrant adults in an irregular situation staying within the jurisdiction of the Netherlands as undocumented migrants or asylum-seekers, whose applications for protection have been rejected.

63. It observes that the main objection raised by the Government refers to the applicability *ratione personae* of the Charter to the complaint, since the group of persons to whom the complaint relates, is viewed by the Government as not covered by the relevant articles of the Charter.

64. In particular, the Government supports its position by referring to paragraph 1 of the Appendix of the Charter read in light of the previous case-law of the Committee on undocumented minors (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2003, decision on the merits of 20 October 2009), as well as to the letter of 13 July 2011 of the Committee, in which the States Parties are invited to make a declaration extending the personal scope of the rights enshrined in the Charter since “such a limitation is hardly consistent with the nature of the Charter”, as well as by recalling that this invitation was replied to by a letter of 14 October 2011 from the Government, stating that it “could not accept the proposal to abolish the limitation on the personal scope of the Charter as specified in paragraph 1 of the Appendix”.

65. The Committee recalls that pursuant to paragraph 1 of the Appendix, the persons covered by Articles 1 to 17 and 20 to 31 of the Charter include foreigners

only insofar as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.

66. When human dignity is at stake, the restriction of the personal scope should not be read in such a way as to deprive migrants in an irregular situation of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28).

67. In the same vein, the Committee also recalls that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, §32). It considers that assessments of the Committee concerning the substantial provisions of the Charter must be based on this human rights approach, which has consistently been applied by the Committee (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §107; DCI v. the Netherlands, cited above, §81. In this context, the Committee has recently emphasised (Statement of interpretation on Article 30, Conclusions 2013, General Introduction) the very close link between the effectiveness of the right recognised by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as among other the right to social and medical assistance (Article 13) or the right to housing (Article 31).

68. The Charter is furthermore and in as far as possible to be interpreted in harmony with other rules of international law of which it forms part (DCI v. the Netherlands, cited above, §35; International Federation of Human Rights Leagues (FIDH) v. France; Complaint No. 14/2003, decision on the merits of 8 September 2004, §26).

69. In this respect, the Committee equally refers to Article H of the Charter (Relations between the Charter and domestic law or international agreements), according to which the provisions of the Charter shall not prejudice the provisions of any multilateral treaties, under which more favourable treatment would be accorded to the persons protected.

70. It moreover follows from the Committee’s case-law that the restriction in the Appendix attaches to a wide variety of social rights and impacts on them differently, which is why not all the Charter rights will be applicable to those with an irregular residence status (FIDH v. France, cited above, §30). The Committee therefore considers that each situation needs to be assessed on a case by case basis.

71. The Committee reiterates that in certain cases and under certain circumstances, the provisions of the Charter may be applied to migrants in an irregular situation. The application of the Charter to migrants in an irregular situation is justified solely where excluding them from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights, and would consequently place the foreigners in question in an unacceptable situation regarding the enjoyment of these rights, as compared with the situation of nationals or foreigners in a regular situation (DCI v. Belgium, cited above, §35).

72. In connection with complaints concerning children, the Committee has held that this is the case with regard to health (FIDH v. France, cited above, §32; DCI v. Belgium, cited above, §102), medical assistance (DCI v. Belgium, cited above, §122), social, legal and economic protection (DCI v. Belgium, cited above, §§39, 86) and shelter (DCI v. the Netherlands, cited above, §§47-48, 66; DCI v. Belgium, cited above, §136).

73. With regard to Article 13§4 in particular, the Committee recalls that emergency social assistance should be provided under the said provision to all foreign nationals without exception (Conclusions 2003, Portugal). Also migrants having exceeded their permitted period of residence within the jurisdiction of the State Party in question have a right to emergency social assistance (Conclusions 2009, Italy). The beneficiaries of the right to emergency social assistance thus include also foreign nationals who are present in a particular country in an irregular manner (Conclusions 2013, Malta).

74. The Committee observes in this connection that the complaint concerns the provision of the necessary food, water, shelter and clothing to adult migrants in an irregular situation. It considers the issues at hand to be closely linked to the realisation of the most fundamental rights of these persons, as well as to their human dignity.

75. Pursuant to the above, Article 13§4 applies to migrants in an irregular situation.

76. Lastly, the Committee refers to its recently published Statement of interpretation on Article 13§1 and 13§4 (Conclusions 2013, General introduction), providing that issues in respect of adequate social assistance granted to any person, including migrants in an irregular situation, without adequate resources will in the future be considered under Article 13§1, and not under Article 13§4. The Committee recalls that the Statement of interpretation will first be applied when examining the reports on Article 13 in 2017.

B. ALLEGED VIOLATION OF ARTICLE 13§4 OF THE CHARTER

A – Arguments of the parties

1. The complainant organisation

77. CEC alleges that legislation and policy in the Netherlands are not in line with the requirements of Article 13§4 of the Charter in so far as adult migrants in an irregular situation are not granted such emergency assistance as food, clothing and shelter when staying without adequate resources within the jurisdiction of the Netherlands.

78. It refers to information provided by the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*), pursuant to which there are approximately between 60,000 and 133,000 undocumented migrants in the Netherlands.

79. CEC observes that access by migrants to food, clothing and shelter is made conditional upon a residence permit. As provided by the Categories of Aliens Regulations (*Regeling verstrekkingen bepaalde categorieën vreemdelingen*; "RVB"), the right to food, clothing and shelter does not cover migrants in an irregular situation, except in the extraordinary cases discussed below.

80. Firstly, migrants in an irregular situation receive food, clothing and shelter, when they participate into the preparations of their voluntary return to their country of origin.

81. Secondly, following the decision in the Complaint No. 47/2008 (DCI v. the Netherlands, cited above), migrant children in an irregular situation should, according to domestic court practice, always be provided with food, clothing and shelter. Similarly, families having received negative decisions on their asylum applications may request for a so-called liberty-restricting measure, permitting them to continue to receive reception facilities.

82. In addition, CEC refers to three decisions of the Central Administrative Court (19 April 2010 LJN: BM0956; 9 September 2011, BT1738; 14 March 2012, BV9270), where conditions of "extreme vulnerability and hardship" have exceptionally been recognised and shelter granted to three adult migrants in an irregular situation. According to CEC, the decisions were all based on medical reasons of a serious nature.

83. Moreover, food, clothing and shelter are additionally provided in extreme winter conditions, for the prevention of security problems posed by encampments of migrants in an irregular situation, as well as where migrants in an irregular situation are genuinely unable to return to their countries of origin, either for the lack of identity documents or for another reason.

84. A request of information on the provision of shelter in the winter was made by CEC to the responsible authorities. According to the information provided by the authorities, shelter was provided to 23 migrants on grounds of extreme winter conditions during the period between 23 December 2011 and 12 September 2013. CEC maintains that during the said period, there were 50 days with temperatures below zero centigrade. It argues that in light of the overall number of migrants in an irregular situation, the possibility to grant emergency shelter on the grounds of extreme winter conditions is not properly applied in practice. This finding is supported

by the observations made by its member organisations working with undocumented migrants in the Netherlands.

85. CEC further maintains that no food, clothing or shelter is provided to migrants submitting a second asylum request, requesting a permit to stay with family, or to those, who according to the obligations arising from Article 3 of the Convention may not be expelled.

86. It argues that the majority of irregular adult migrants do not fall within the exceptions listed above and describes the circumstances, in which this majority lives, as frightful. The individuals at issue live on the streets, without food and sufficient clothing, and are deprived of sleep. A “deterioration of health and premature death ensues”. According to CEC, no exceptions to the right to emergency assistance should be allowed in situations where human dignity or life is at stake.

87. It acknowledges that necessary medical assistance is available to everyone in the Netherlands. Pursuant to a recent study by the National Ombudsman of the Netherlands (*Medische zorg vreemdelingen*; 2013/215, 3 October 2013; available at <<http://www.nationaleombudsman.nl/rapporten/2013/125#>>), undocumented migrants were however found to experience difficulties in obtaining medical treatment due to the lack of shelter.

88. The complainant organisation further argues that the denial of food, clothing and shelter from adult migrants in an irregular situation is a disproportionate means for an objective of migration policy, as the withholding of this type of emergency assistance will not significantly affect a country’s immigration flows.

89. In addition, with regard to the Government’s argument on the personal responsibility of a migrant in assisting in the preparations of their expulsion, CEC argues that an adult living without sufficient resources in an irregular situation should never be made to live in inhuman conditions.

90. It considers that the Netherlands possess sufficient resources for the organisation of basic emergency assistance. This is evidenced by the fact that even though expensive emergency medical care is made available, cheaper basic necessities like food, clothing and shelter are not.

91. CEC further refers to a practice of “a number of municipalities” to financially support private organisations providing help to migrants in an irregular situation. Help is also provided by churches and certain individuals. There is nevertheless no entitlement to this type of assistance. It may furthermore often be provided only to migrants in an irregular situation belonging to the most vulnerable groups. CEC furthermore observes that adult migrants seeking help from private individuals in an irregular situation run a risk of being exploited in return for the necessary assistance.

92. It argues that the State should not circumvent its obligation to provide social emergency assistance to everyone regardless of legal status by referring to help provided by private actors, but should always provide minimum assistance in order to protect those within its jurisdiction from extortion.

93. CEC further argues that need should be the only criterion for the distribution of the emergency social assistance referred to in Article 13§4. It does not question the right of the State to control the entry of aliens into its territory; nor does it attempt to raise the rights of adult migrants in an irregular situation to the same level with those of citizens.

94. In view of the above information, CEC submits that the current legislation and practice of the Netherlands on the distribution of emergency assistance to migrant adults in an irregular situation amount to a violation of Article 13§4 of the Charter.

2. The respondent Government

95. The Government argues that its immigration policy is directed towards the encouragement of voluntary return. This is why reception services are only provided temporarily and only to the certain groups. Illegal residence is discouraged by making reception services conditional.

96. It further admits that irregular adult migrants are for the most part excluded from the scope of governmental services, except for the provision of primary and secondary education to children, as well as of legal assistance and the necessary medical treatment.

97. It maintains that the migrants in question are obliged to leave the Netherlands and must thus bear their personal responsibility by participating in the organisation of their departure. The Government considers the irregular status of adult migrants to often result of a conscious choice. In such circumstances, adult migrants are able to end their irregular stay by agreeing to return, which is furthermore their legal obligation.

98. The Government further maintains that the 23 aliens mentioned as those to whom emergency shelter had exceptionally been provided in winter conditions were only those who had not been removed from reception facilities pursuant to the cold-weather rule (see paragraph 84). Furthermore, the figures mentioned in the letter do not take into account the municipal provision of shelter.

99. It argues having taken into account the situation of migrants who are genuinely unable to leave the territory of the Netherlands on the grounds of having been refused entry to their place of previous residence. These migrants are eligible for a “no-fault” residence permit.

100. It likewise maintains that those migrant adults who cannot be returned pursuant to the principle of *non refoulement* are often persons in respect of whom indications of war crimes exist. A State cannot be obliged to offer refuge for suspected human rights violators.

101. Refusal to cooperate with the authorities should not, in the Government’s opinion, lead to situations where the irregular stay is continued and the persons concerned are tacitly permitted to stay in the country. Such circumstances would undermine objectives of migration policy and the enforcement of statutory obligations, as well as run counter to the right of a sovereign State to control the entry of aliens into its jurisdiction. Campaigns encouraging refusals to voluntarily leave the country regardless of a final judicial decision should never be accepted as grounds for altering the official asylum policy.

102. Finally, the Government considers the complainant organisation’s argument about the fatal consequences of the current policy as a misinterpretation, since every migrant in an irregular situation is entitled to the necessary medical treatment. This type of treatment is available regardless of any residence requirements.

103. With regard to the study by the National Ombudsman (see paragraph 87 above) in particular, the Government notes having contested the claim on a lack of shelter being an obstacle to healthcare access. It notes that a financial reimbursement is available to healthcare providers in situations where persons residing in the Netherlands in an irregular manner are unable to pay for their healthcare.

104. The Government concludes that the right of adult migrants in an irregular situation to reception facilities has been restricted by duly balancing humanitarian interests with those of law enforcement. The national legislation and policy accordingly fulfil the requirements of the Charter.

B – Assessment of the Committee

105. The Committee firstly recalls that under Article 13§4 of the Charter, the States Parties have undertaken to provide appropriate short-term assistance to persons in a situation of immediate and urgent need (Conclusions 2013, Malta). For this purpose, accommodation, food, emergency medical care and clothing should be provided. While an individual’s need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this criterion must not be interpreted too narrowly. No conditions on the length of presence on the territory of the State Party in question may be set on the right to emergency assistance (Conclusions 2013, Montenegro).

106. It also recalls that emergency social assistance should be supported by a right to appeal to an independent body (Conclusions 2004, the Netherlands).

107. With regard to the Netherlands in particular, the Committee has found the situation not to be in conformity with Article 13§4, because emergency social assistance was not made available to all categories of foreigners present in a regular manner (Conclusions 2003, the Netherlands). In particular, such assistance was not granted to nationals of the States Parties to the Charter other than European Union Member States and Parties to the Agreement on the European Economic Area, who are regularly present but not resident in the country (Conclusions 2005, the Netherlands).

108. With regard to migrants in an irregular situation, the Committee recalls having concluded within the reporting procedure that the national situation was not in conformity with Article 13§4 of the Charter as “it has not been established that all persons without resources, whether or not legally present in the Netherlands, have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency” (Conclusions 2009, the Netherlands).

109. In addition, in its most recent Conclusions concerning the implementation of Article 13§4 in the Netherlands, the Committee noted that “in some cases, aliens in irregular situation, [and] victims of violence of human trafficking, can also have access to cash benefits under the "Certain Categories of Aliens Order" (RVB) and if they cooperate with the police they can get a residence permit and become eligible to claims under the Work and Social Assistance Act (WWB). Furthermore, aliens in irregular situation who are being detained with a view to deportation fall under the Custodial Institutions Agency and are entitled to the provisions for detainees. The report does not indicate however that, outside these circumstances, aliens in an irregular situation have, in general, access to emergency social assistance (provision of emergency accommodation, food, and clothing).” (Conclusions 2013, the Netherlands).

110. The Committee notes from another source (Fundamental Rights Agency of the European Union (“FRA”); Fundamental rights of migrants in an irregular situation in the European Union; 2011, pp. 32, 35) that migrants in an irregular situation who have not been removed are not provided with accommodation. Insofar as the migrants in question do not fall into a group to whom an exception is applied, this finding is supported by the other international studies referred to above (see paragraphs 50 to 60).

111. Turning to the material provided to it in connection with the current complaint, the Committee considers that in spite of the efforts made by the domestic authorities (see also submissions of the Government in response to the request for immediate measures in the framework of Complaint No. 86/2012 (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, registered at the Secretariat on 9 September 2013), there is nothing to demonstrate that the situation that has been found to be in violation of Article 13§4 has been redressed with regard to adult migrants in an irregular situation.

112. To the contrary, the Committee notes from the submissions of the parties that a large majority of the said adult migrants are not offered any emergency social assistance under the domestic legislation.

113. The Committee considers that in light of the international materials mentioned above, it cannot accept the Government's argument on the lack of international obligations to offer protection to adult migrants in an irregular situation. It firstly notes in this regard that also the relevant instruments of the United Nations guarantee an adequate standard of living, that is, food, clothing and housing, to everyone without limitations based on the regularity of residency (see paragraphs 34-35).

114. The Committee secondly takes note of the so-called core obligations defined by the Committee on Economic, Social and Cultural Rights of the United Nations, which the said Committee considers as non-derogable, as well as linked to the dignity of the human person. These obligations include access to basic shelter and minimum essential food for everyone, regardless of residence status (see paragraphs 36-38).

115. The Committee recalls that human dignity is the fundamental value and the core also of European human rights law (*FIDH v. France*, cited above, §31).

116. Even though the Convention and the relevant legal rules of the European Union on asylum are applicable only to foreigners staying in a regular manner within the jurisdiction of the States Parties, the Committee observes that both the Court and the Court of Justice in their recent case-law have acknowledged the importance of preserving human dignity in connection with the minimum protection provided to migrants (see paragraphs 28-29, 47-48).

117. The Committee observes in this connection that the scope of the Charter is broader and requires that necessary emergency social assistance be granted also to those who do not, or no longer, fulfil the criteria of entitlement to assistance specified in the above instruments, that is, also to migrants staying in the territory of the States Parties in an irregular manner, for instance pursuant to their expulsion. The Charter requires that emergency social assistance be granted without any conditions to nationals of those States Parties to the Charter who are not Member States of the Union. The Committee equally considers that the provision of emergency assistance cannot be made conditional upon the willingness of the persons concerned to cooperate in the organisation of their own expulsion.

118. The Committee recalls that while States may decide to delegate certain tasks to local authorities, such a delegation does not relieve them from the obligations entered into under international agreements (*The Central Association of Carers in Finland v. Finland*, Complaint No. 70/2010, decision on the merits of 4 December 2012, §§55-56; *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011, decision on the merits of 18 March 2013, §54).

119. While it is undisputed between the parties that the local authorities may grant emergency assistance to adult migrants in need of such assistance when in an irregular situation, and while this is also done by such third parties as non-governmental organisations, churches and individuals, the Committee considers that especially in a situation where this delegation of tasks or responsibilities is not based on any legal, administrative or financial agreements or safeguards agreed upon between the Government and the bodies factually providing assistance in order to provide for legal certainty, the prevailing situation cannot fulfil the positive obligations assumed by the Government under Article 13§4.

120. The Committee takes note of the reasons of immigration policy behind this situation, and recalls that pursuant to international law, States are indeed entitled to control the entry, residence and expulsion of aliens in their territory. It does not wish to call into question the legitimacy of this aim.

121. It is nevertheless unable to consider that the denial of emergency shelter to those individuals who continue to find themselves in the territory of the Netherlands is an absolutely necessary measure for achieving the aims of the immigration policy. No indications on the concrete effects of this measure have been referred to by the Government.

122. The Committee observes, similarly, that the persons concerned by the current complaint undeniably find themselves at risk of serious irreparable harm to their life and human dignity when being excluded from access to shelter, food and clothing. It refers to its established case-law under the reporting procedure (see paragraphs 73, 106) and holds that access to food, water, as well as to such basic amenities as a safe place to sleep and clothes fulfilling the minimum requirements for survival in the prevailing weather conditions are necessary for the basic subsistence of any human being.

123. It considers that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country. The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation.

124. The Committee finds that the practical and legal measures denying the right to emergency assistance accordingly restrict the right of adult migrants in an irregular situation and without adequate resources in the Netherlands in a disproportionate manner.

125. Lastly, as regards the allegations related to access to medical care, the Committee reiterates that persons staying in the Netherlands in an irregular manner are entitled to necessary medical care (Conclusions 2009, the Netherlands; also paragraph 57). Legislation and practice denying entitlement to medical assistance from foreign nationals irregularly within the territory of a State Party are contrary to the Charter, as access to sufficient health care has been considered a prerequisite for the preservation of human dignity (*FIDH v. France*, cited above, §§31-32). The Committee however considers that nothing in the material submitted justifies a different conclusion in the current complaint with regard to emergency medical assistance available to migrants in an irregular situation.

126. In view of the above, the Committee holds that there is a violation of Article 13§4 of the Charter.

SECOND PART: ALLEGED VIOLATION OF ARTICLE 31§2 OF THE CHARTER

127. Article 31§2 of the Charter reads as follows:

“Article 31 – The right to housing”

“Part I: Everyone has the right to housing.”

“Part II: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

[...]

2. to prevent and reduce homelessness with a view to its gradual elimination;

[...].”

A. APPLICABILITY OF ARTICLE 31§2 TO THE PERSONS CONCERNED BY THE COMPLAINT

128. The Committee recalls that eviction from shelter of persons present within the territory of a State Party in an irregular manner should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity. States are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation (*DCI v. the Netherlands*, cited above, § 63).

129. The Committee further reiterates that a national situation is not in conformity with Article 31§2 of the Charter, where the right to shelter is not guaranteed to persons irregularly present, including children, for as long as they are within the jurisdiction of the state (Conclusions 2011, Ukraine).

130. Referring also to its observations on the applicability of the Charter made under Article 13§4 above, the Committee considers that Article 31§2 applies to migrants in an irregular situation.

B. ALLEGED VIOLATION OF ARTICLE 31§2 OF THE CHARTER

A – Arguments of the parties

1. The complainant organisation

131. CEC alleges that legislation and policy in the Netherlands are in breach of the requirements of Article 31§2 of the Charter, because adult migrants in an irregular situation are denied unconditional access to emergency shelter.

132. It maintains that pursuant to the legislation and practice described above, access to shelter is not guaranteed to everyone and homelessness accordingly not prevented on part of the adult migrants in question.

133. It follows that the Netherlands should be found to be in breach of Article 31§2 of the Charter.

2. The respondent Government

134. The Government's observations have been summarised under the first part of the complaint.

B – Assessment of the Committee

135. The Committee first recalls that under the Charter, homeless persons are those who legally do not have at their disposal a dwelling or another form of adequate housing in terms of Article 31§1 (Conclusions 2003, France).

136. Under Article 31§2, States Parties have undertaken to take measures to reduce homelessness with a view to gradually eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. It likewise requires measures to help the homeless to overcome their difficulties and to prevent them from returning to a situation of homelessness (Conclusions 2003, Italy).

137. The Committee has repeatedly considered that the right to shelter is closely connected to the right to life and crucial for the respect of every person's human dignity (DCI v. the Netherlands, cited above, §47).

138. According to Article 31§2 of the Charter, shelters are required to meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting in order to ensure that the dignity of the persons sheltered is respected. Another basic requirement is the security of the immediate surroundings (DCI v. the Netherlands, cited above, § 62).

139. Support should moreover be routinely offered to help the persons within the shelter facilities so that they may attain the greatest possible degree of independence (European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §108).

140. With regard to persons accommodated in emergency shelters, who are regularly resident or regularly working within the territory of the State Party concerned, the Committee recalls that the provision of shelter, however adequate, cannot be considered a lasting solution. They thus must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 within a reasonable time (Conclusions 2011, Andorra).

141. However, States cannot be required to provide alternative accommodation to those present in an irregular manner within the territory of a State Party. Eviction from shelter should accordingly be banned, as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity (DCI v. the Netherlands, cited above, §63).

142. With regard to the Netherlands, the Committee recalls that the domestic situation has been found not to be in conformity with Article 31§2 of the Charter due to the lack of a legal requirement to provide shelter to irregular migrant children for as long as they were in the jurisdiction of the Netherlands (Conclusions 2011, the Netherlands).

143. With regard to the instant complaint, the Committee has held under Article 13§4 that the large majority of adult migrants in an irregular situation are provided shelter neither in law, nor in practice.

144. In light of the Committee's established case-law, shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them. The Committee again refers to its findings above under Article 13§4 and reiterates that the right to shelter is closely connected to the human dignity of every person regardless of their residence status. It considers that the situation, on the basis of which a violation has been found under Article 13§4, also amounts to a violation of Article 31§2.

145. In the view of the above, the Committee holds that there is a violation of Article 31§2 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously, that there is a violation of Article 13§4 of the Charter; and
- unanimously, that there is a violation of Article 31§2 of the Charter.



Luis JIMENA QUESADA
President and Rapporteur



Régis BRILLAT
Executive Secretary

APPENDIX

Decision on admissibility

Decision on immediate measures



European
Social
Charter

Charte
Sociale
Européenne



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

DECISION ON ADMISSIBILITY

1 July 2013

Conference of European Churches (CEC) v. the Netherlands

Complaint No. 90/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 265th session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Alexandru ATHANASIU
Jarna PETMAN
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary,

Having regard to the complaint dated 17 January 2013 and registered on the 21 January 2013 as number 90/2013, lodged by the Conference of European Churches ("the CEC") and signed by its General Secretary, Rev. Dr Guy LIAGRE, requesting the Committee to find that the situation in the Netherlands is not in conformity with Article 13§4 and 31§2 of the Revised European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations on the admissibility of the Government of the Netherlands ("the Government") registered on 3 May 2013;

Having regard to the Charter and, in particular, to Article 13 and 31 thereof, which read as follows:

Article 13 – The right to social and medical assistance

Part I: "Anyone without adequate resources has the right to social and medical assistance."

Part II: "With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953."

Article 31 – The right to housing

Part I: "Everyone has the right to housing."

Part II: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its

207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session (“the Rules”);

Having deliberated on 1 July 2013;

Delivers the following decision, adopted on the above-mentioned date:

The CEC asks the Committee to find that the situation in the Netherlands is in breach of Article 13§4 and 31§2 of the Charter because the 2000 Aliens Act excludes illegally present aliens from receiving any governmental services with the exception of primary and secondary education for children, medical treatment when necessary from a medical perspective and assistance in legal matters. In this sense, it is argued that food, clothing and shelter are not perceived by the Government as a prerequisite of health or life itself and are made conditional upon the obtaining of a residence permit.

At the request of the Committee, the Government has on 3 May 2013 made written submissions on the admissibility of the complaint, arguing it to be inadmissible insofar as it concerns persons residing illegally within the jurisdiction of the Netherlands and therefore not within the scope of application of the Charter within the meaning of paragraph 1 of the Appendix.

On 6 May 2013, these observations were sent to the CEC for information.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee’s Rules and the Government’s related objections

The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by the Netherlands on 3 May 2006 and entered into force for this State on 1 July 2006, the complaint has been submitted in writing and concerns Articles 13§4 and 31§2 of the Charter, provisions accepted by the Netherlands when it ratified this treaty on 3 May 2006 and to which it is bound since its entry into force in respect of that state on 1 July 2006.

1. Moreover, the grounds for the complaint are indicated.
2. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, the CEC is an international non-governmental organisation with participative status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations entitled to lodge collective complaints before the Committee.

As regards the particular competence of the CEC on the subject-matter of the complaint, which is not contested by the Government, the Committee has examined the organisation’s Constitution and notes that, under the preamble and Article 1 thereof, the CEC is an ecumenical fellowship of churches, the goals and activities of

which are aimed at, *inter alia*, contributing to the safeguarding of life and the wellbeing of all human kind.

With regard to the competence of the CEC in issues of migration in particular, the Committee observes that according to information available on the Internet page of the organisation, the CEC consists of a General Secretariat and three Commissions, one of which is the Churches' Commission for Migrants in Europe. Migration and refugee issues have likewise been enlisted amongst the "current issues" dealt with by the CEC. The Committee therefore considers the CEC to have particular competence within the meaning of Article 3 of the Protocol on the subject-matter of the collective complaint.

Moreover, the complaint is signed by Rev. Dr Guy LIAGRE, General Secretary of the CEC, together with Mrs Henriette BRACHET, Finance Officer, who, in accordance with Article 7(2) of the CEC's Constitution, taken together with the relevant extract from the "Registre du Commerce" of Geneva, submitted in support of the complaint by the complainant organisation, are together entitled to legally represent the complainant organisation. The Committee therefore considers the condition provided for in Rule 23 of its Rules to be fulfilled.

As to the Government's other objections concerning the admissibility

As concerns the Government's first argument of inadmissibility, the Committee recalls having held that when human dignity is at stake, the restriction of the personal scope included into the Appendix of the Charter should not be read in such a way as to deprive foreigners within the category of unlawfully present migrants of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity (*Defence for Children International v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28).

The Government further supports its objection by referring to a letter by the Committee, dated on 13 July 2011, inviting states parties to make a declaration for the purpose of extending further the personal scope of the Charter. The Government considers the wording of the letter to support its argument on the inapplicability of the Charter to adults not residing lawfully or working regularly within the territory of the states parties. It is likewise recalled by the Government that the letter was on 14 October 2011 replied on behalf of the Netherlands by the Director of the Europe Department of the Ministry of Foreign Affairs, stating that the Government could "not accept the proposal to abolish the limitation on the personal scope of the Charter as specified in paragraph 1 of the Appendix".

The Committee holds that the matters of the personal scope of the Charter, as well as of the substantial rights guaranteed under Articles 13 and 31 cannot be addressed at this stage of the proceedings. It accordingly considers the application of the Charter with regard to these issues to fall within the merits of the complaint.

Finally, with regard to the information emanating from the complaint on that the substance-matter of the current complaint is in two instances being dealt with by another national or international body, namely by the Human Rights Committee of

the United Nations and the Committee for the Elimination of Discrimination Against Women, the Committee refers to the Explanatory Report on the Protocol and in particular to paragraph 31 thereof, providing that a complaint may be declared admissible even if a similar case has been submitted to another national or international body. Pursuant to this provision, the Committee considers itself mandated to examine the current complaint also in the light of these examples.

Basing its assessment on the above considerations, the Committee concludes that the plea of inadmissibility cannot be sustained. It accordingly decides to join the above arguments to the merits of the complaint.

For these reasons, the Committee, on the basis of the report presented by Luis JIMENA QUESADA, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 27 September 2013.

Invites the CEC to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter to make comments by 27 September 2013, should they so wish;

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 27 September 2013.



Luis JIMENA QUESADA
President and Rapporteur



Régis BRILLAT
Executive Secretary

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

**DECISION
ON IMMEDIATE MEASURES**

25 October 2013

Conference of European Churches (CEC) v. the Netherlands

Complaint No. 90/2013

The European Committee of Social Rights (“the Committee”), committee of independent experts established under Article 25 of the European Social Charter (“the Charter”); during its 267th session,

Having regard to the request for immediate measures registered on 20 June 2013 and submitted by the Conference of European Churches (“the CEC”), asking the Committee, primarily “to invite the Dutch authorities to suspend the operation of the Linkage Act with regard to shelter, food and clothing for all persons currently excluded through the Linkage Act, so as to prevent further harm and safeguard health and life”, and alternatively to suspend the operation of several provisions of domestic law (in particular, Article 16.2 of the Employment and Social Assistance Act as well as Article 8.1 of the Social Support Act) “to such an extent that undocumented migrants have access to shelter, food and clothing in order to safeguard their human dignity and prevent further harm”;

Having regard to the response of the Government of the Netherlands (“the Government”), dated 2 September 2013, where the Government objects to this request, firstly, on grounds of the “potentially far-reaching consequences” of adopting general measures connected with the “nature of the collective right of complaint”; secondly, the constitutional impact deriving from a suspension of an Act of Parliament; thirdly, the fact that the existence of a possible irreparable harm is what the parties disagree on and, therefore, immediate measures could not be adopted before considering the merits of the complaint; as well as, finally, since the request goes beyond the boundaries of the Charter, as it seeks a measure on behalf of persons not covered by the provisions of the Charter;

Having regard to the decision on the admissibility of the complaint adopted by the Committee on 1 July 2013;

Having regard to the Charter and to the Rules of the Committee (“the Rules”), in particular to Rule 36, which reads as follows:

Rule 36 – Immediate measures

1. Since the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter.

2. In case of a request of immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.

3. The Committee’s decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. The Committee may request information from the respondent State on the implementation of the indicated measures.”

Having deliberated on 22, 24 and 25 October 2013;

Delivers the following decision, adopted on the latter date:

The Committee underlines the exceptional character of immediate measures, the adoption of which must appear “necessary with a view to avoiding the risk of a serious and irreparable injury and to ensuring the effective respect for the rights recognized in the European Social Charter” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, § 32).

In light of Rule 36, it considers that the persons concerned by the complaint evidently find themselves at risk of serious irreparable harm to their lives and their integrity when being excluded from access to shelter, food and clothing.

Assessing the information at its disposal, the Committee considers that the requested measure on the suspension of the Linkage Act *in toto* or of two specific provisions (of the Employment and Social Assistance Act and the Social Support Act) must be rejected. It notes that in light of the information provided on the Dutch situation in connection to the Complaint No. 86/2012, it is possible to find solutions in order to not exclude irregular migrants from access to facilities relevant to the fulfillment of their basic needs (shelter, clothing and food).

In this context, the Committee considers it necessary to indicate immediate measures.

For these reasons, the Committee,

INVITES THE RESPONDENT GOVERNMENT TO TAKE THE IMMEDIATE MEASURES INDICATED BELOW:

- Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter, clothes and food) are met; and
- Ensure that all the relevant public authorities are made aware of this decision.

Requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision and to publish the decision on the Internet site of the Council of Europe.



Luis JIMENA QUESADA
President and Rapporteur



Régis BRILLAT
Executive Secretary