

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

**DECISION
ON IMMEDIATE MEASURES**

25 October 2013

**European Federation of National Organisations working with the Homeless
(FEANTSA) v. the Netherlands**

Complaint No. 86/2012

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 1 July 2013 and submitted by the European Federation of National Organisations working with the Homeless (“FEANTSA”) “to invite the Netherlands authorities to suspend the operation of provisions in law and policy, such as residency, local connection and other criteria, that render the housing first principle ineffective”, in particular, since according to the complainant organisation, “there is a discrepancy between policy and practice, that limits access to shelter to those in need”, and since in the opinion of FEANTSA, “given the often local nature of the policies concerned, and the divergence between them, this invitation should be extended to all relevant authorities, including the municipalities responsible and their mandate holders”;

Having regard to the response of the Government of the Netherlands (“the Government”) registered on 9 September 2013, in which the Government argues that, in acknowledging that the situation addressed by the complaint is not satisfactory, it is taking measures to improve the situation and, in light of these developments, “invites the Committee to strike the complaint off the list of pending complaints, as provided for in Rule 39 of the Committee’s Rules” since “the conditions for upholding the complaint are no longer met”, and alternatively, “invites the Committee to postpone its consideration of the merits of the complaint at least until after a follow-up review has been carried out”;

Having regard to the decision on 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:

1. 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 recognised 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).

2. 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 excluded from the access to shelter. The Government acknowledges this risk by referring to a report by the Trimbos Institute (The Netherlands Institute of Mental Health and Addiction) under the title “*Is shelter accessible nationwide? Study of the local connection and nationwide access to community shelter services*” (report carried out at the request of the State Secretary for Health, Welfare and Sport). It acknowledges that this report shows “that under the current system, nationwide accessibility of shelter cannot be adequately guaranteed”.

3. Assessing the information at its disposal, the Committee considers that the requested measure of suspension of the operation of provision in law and policy must be rejected. Nevertheless, in the Committee’s view, the Government is also aware of the problematic situation at stake, as illustrated by different parts of its submissions made in response to the request for immediate measures, in which it

states: “there is room for improvement at various levels, (...) making explicit agreements between municipalities and institutions providing shelter, and providing better instructions for staff”; “According to the State Secretary, municipalities are apparently failing in practice to fulfill their statutory obligation to make community shelter accessible nationwide to anyone who needs it. [...]unicipalities should be ensuring that those entitled to shelter have access to it, even if they have no ties to a given region”; “if necessary, the State Secretary will also facilitate guidelines for institutions that provide shelter, and he will encourage shelters and municipalities to clarify the agreements in place with regard to the local connection”; “in the present case, the Government acknowledges that the situation addressed by the complaint is less than satisfactory and, in addition, is taking measures to improve the situation”. The Committee notes this to mean that, under the margin of appreciation concerning immigration policy, as well as under the domestic legal standards, it is possible to find solutions in order to ensure access to shelter.

4. Under these conditions, even when taking into account the developments highlighted by the Government, the Committee cannot accept the invitation to strike the complaint off the list of pending complaints (Rule 39 of the Committee’s Rules) nor “to postpone its consideration of the merits of the complaint at least until after a follow-up review has been carried out”. In this context, the Committee considers necessary to indicate immediate measures.

5. 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) 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.



Lauri LEPIIK
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary