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**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 265<sup>th</sup> 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 201<sup>st</sup> session and revised on 12 May 2005 at its

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

Having deliberated on 1 July 2013;

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

1. 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.
2. 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.
3. 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*

4. 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.
5. Moreover, the grounds for the complaint are indicated.
6. 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.
7. 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.

8. 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.

9. 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*

10. 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).

11. 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".

12. 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.

13. 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.

14. 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.

15. 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