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Using Collective Complaints in National Courts in The Netherlands

by

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What is a collective complaint?

- Complaint mechanism under the European Social Charter
- No protocol, no complaints
 - 1996 protocol
- Which Charter?
 - 1961 ESC and 1998 Revised ESC
- Which Rights?
 - Complex system (be aware!)
- Which Organizations?
 - NGOs with CoE consultative status
- Which Complaints?
 - Law, policy, and practice
 - *Ex tunc* (time of the complaint is relevant)

Collective complaints procedure

- Filing the complaint
 - Complainant organization
 - Substance of the complaint
- Admissibility and standing
 - Annex to ESC
- Written submissions
 - First admissibility
 - Then substantive rounds (multiple if needed)
- Rule 36: immediate measure
 - No time limit
 - Prevention of harm
- Decision on the Merits
 - Publication date (+4 months)
 - Finding solutions (or not...)
- CoE Committee of Ministers resolution (Art 9)
 - Legal v. Political

Background

- Netherlands
 - No constitutional review by courts
 - Direct application of international law by courts
 - “only” self-executing norms (so no ESC rights)
- 1998 Linkage Act (Koppelingswet)
 - Linking all government databases in order to combat fraud
 - Exclusion of undocumented migrants from government services (focus on return)
- 2005/2006 Case A1
 - Undocumented family, three children, one infant, no running water for lack of payment
 - Breakthrough through General Benefits Act (Wet Werk en Bijstand)

Background (continued)

- 2008 landmark cases:
 - Case A2: family with two young children from Afghanistan
 - Case K: young adult from Sierra Leone
 - The municipalities refused to help
 - Central Appeals Council decided in favour of A and K:
 - Only when the suffering is a very severe violation of article 8 ECHR
 - Only those migrants who have in some way have some lawful residence in the Netherlands.
- Result:
 - Cases of vulnerable migrants won (2010 cases)
 - All other cases lost
 - Need for guidance of European Committee on Social Rights

“guidance project”

- Three collective complaints:
 - 47/2008 (DCI v The Netherlands): a child is a child and foremost a child. All children should be protected
 - 86/2012 (FEANTSA v The Netherlands): no selection criteria allowed (need is decisive criterion)
 - 90/2012 (CEC v The Netherlands): (all) people are vulnerable if they have no place to stay.
- Result:
 - immediate measures 25 october 2013.
 - With this the political battle started It became a political issue
 - Churches took a stand. Amnesty, HRW, College Rechten van de Mens, UN Special Rapporteur. Squatters.

Political debate?



OPPOSITIE MAAKT GEHAKT
VAN BED-BAD-BROOD-AKKOORD



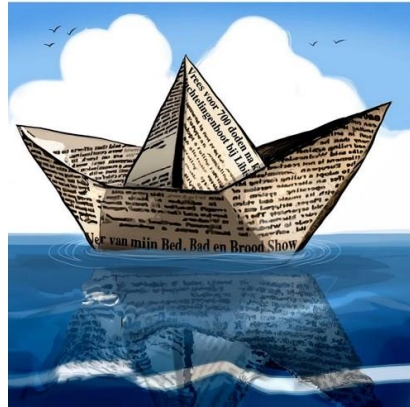
**BED BAD
BROOD...**
...STOEP DRUP
KRUMEL



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Bas van der Schot



Zeur & Zanik

*zouden zich van schaamte
in hun graf omsdraaien
als ze daar al in lagen*



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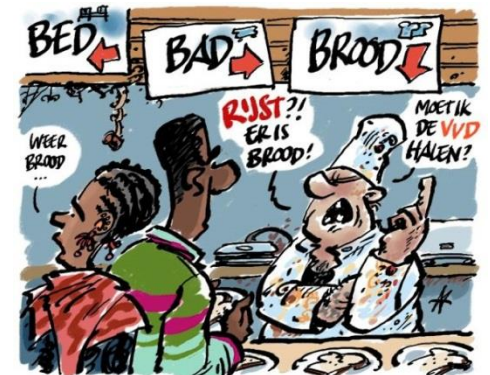
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Het Oudhollandsch gezelschapsspel 'Bed, bad, brood'



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Outcome?



Current situation

- December 17, 2014:
 - Central Appeals Council: 11 judgments
 - Everyone is at least entitled to food (bread), sanitation (bath) and a place to sleep during the night (bed)
- CoE Committee of Ministers resolution of April 15, 2015
 - Vague (and very political) resolution
- Crisis within the government with political solution
 - Government letter to Dutch Parliament of April 22, 2015: it is up to the courts to decide.
- July 22, 2015:
 - Court hearing of eight adults from Tibet, who asked help (shelter and food) from the municipality, which was refused in 2012

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Questions?

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