EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 2 July 2014

Notification: 9 July 2014

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

Complaint No. 86/2012

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 2 July 2014,

On the basis of the report presented by Lauri LEPPIK,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint submitted by the European Federation of National Organisations working with the Homeless (“FEANTSA”) was registered on 4 July 2012.

2. The complainant organisation alleges that in the Netherlands, the relevant legislation and practice concerning the housing of the homeless are in violation of Article 13 (right to social and medical assistance), Article 16 (right of the family to social, legal and economic protection), Article 17 (right of children and young persons to social, legal and economic protection), Article 19 (right of migrant workers and their families to protection and assistance), Article 30 (right to protection against poverty and social exclusion) and Article 31 (right to housing) of the European Social Charter ("the Charter"). It invokes the said Articles either separately or taken together with Article E of the Charter.

3. In accordance with Rule 29, paragraph 2 of the Rules of the Committee ("the Rules"), on 9 July 2012, the President of the Committee asked the Government of the Netherlands ("the Government") to make, before 20 September 2012, written submissions on the admissibility and merits of the case.

4. The time-limit was extended until 18 October 2012 and the Government's submissions on the admissibility and merits were registered on 16 October 2012.

5. On 19 February 2013, FEANTSA submitted its reply to the Government's submissions.

6. On 20 February 2013, the Committee invited the States Parties to the Protocol providing for a system of collective complaints ("the Protocol") and having made a declaration in accordance with Article D§2 of the Charter to transmit to it, before 9 May 2013, any observations they wished to make in the event that that the complaint would be declared admissible.

7. By a letter dated on 20 February 2013, referring to Article 7§2 of the Protocol, the Committee invited the international organisations of employers or trade unions referred to in paragraph 2 of Article 27 of the 1961 European Social Charter to submit their observations within the time-limit of 9 May 2013.

8. No such observations were received.

9. On 13 March 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 30 April 2013. This time-limit was extended until 30 May 2013 and the response registered on that date.

10. Furthermore, on 13 May 2013, a request for an oral hearing was submitted by the complainant organisation in accordance with Rule 33 of the Rules.

11. On 1 July 2013, the Committee declared the complaint admissible and decided not to hold a public hearing in this case.

12. On 8 July 2013, the admissibility decision was communicated to the parties and the Government was simultaneously invited to make further written submissions on the merits of the complaint by the time-limit of 27 September 2013. No such observations were received.

13. On 1 July 2013, the complainant organisation made a request for immediate measures in accordance with Rule 36§1 of the Rules.

14. By a letter dated on 8 July 2013, referring to Article 7§§1 and 2 of the Protocol, the Committee invited the other parties to the Protocol, the States Parties having made a declaration in accordance with Article D§2 Charter, as well as the international organisations of employers or trade unions referred to in paragraph 2 of Article 27 of the 1961 European Social Charter to submit their observations within the time-limit of 27 September 2013. No such observations were received.

15. On 19 July 2013, the Government was invited to make written submissions on the request for immediate measures. The submissions were received on 9 September 2013.

16. 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.

17. In its decision on immediate measures, the Committee also decided not to postpone its consideration of the merits of the complaint, nor to strike it out of its list of pending complaints, as requested by the Government.

THE PARTIES' SUBMISSIONS

A - The complainant organisation

18. The complainant organisation asks the Committee to find that the legislation and practice in the Netherlands are not in conformity with Article 13, 16, 17, 19, 30 and 31 of the Charter, as access to emergency shelter is made subject to what is known as the local connection criteria, as well as to other criteria. These limitations affect the rights of various groups in need of shelter, namely homeless persons who are nationals of the respondent state, as well as migrant workers and other migrants residing in the Netherlands either regularly or irregularly. It invokes the said Articles either separately or taken together with Article E.

19. FEANTSA further alleges a violation of the said Articles on grounds that the availability and quality of emergency shelters are insufficient, compromising the rights of women, children and young persons in need of shelter services.

2 – The respondent Government

20. In its first submissions, the Government rejects the complainant organisation's assertions in their entirety and asks the Committee to declare the complaint unfounded in all respects.

21. In its letter of 9 September 2013, the Government however refers to a recent national survey on the nationwide accessibility to emergency shelters (see paragraph 92). Pursuant to the information contained therein, the Government admits that nationwide access to emergency shelters cannot be guaranteed at all times but measures are being taken to remedy the situation.

RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant provisions of the domestic law are set out in the Social Support Act (*Wet Maatschappelijke Ondersteuning*; Stb. 2006, 351; "WMO"). From 1 January 2014 onwards, Section 8 of the 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."

23. Section 20 of the WMO provides:

1. "Our Minister may award a special-purpose grant for the purpose of policy in the area of public mental health care, community shelter services and drug addiction to municipalities designated by order in council.

2. Our Minister may award a special-purpose grant for the purpose of policy in the area of women's shelter services to municipalities designated by order in council.

3. Rules may be laid down by or pursuant to order in council with regard to:

    a. the amount of the grant or the way in which it is determined;

    b. grant applications and decision-making thereon;

    c. the obligations attaching to the award of a grant;

    d. the determination of the size of the grant;

    e. the withdrawal or amendment of the decision to award and determine the size of the grant;

f. payment or recovery of the grant and the award of advance payments on the grant.

4. A municipality that is awarded a grant as referred to in subsection 1 or 2 and that provides institutions with funds must ensure that such institutions keep a record of their activities in accordance with rules laid down by Our Minister by ministerial order and pass on the recorded information to an institution designated for this purpose by Our Minister.

5. A municipality that receives a grant as referred to in subsection 1 or 2 must consult with surrounding municipalities on how it is spent.

6. The assistance in the area of community shelter services and drug addiction policy funded by municipalities pursuant to subsection 1 and 2 is accessible to any person who lives in the Netherlands."

24. Lawful residence in the Netherlands is defined in Section 8 of 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>) 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."

25. A total of 43 municipalities have been mandated by a Council Decree (*Besluit Maatschappelijke Ondersteuning*) of 2 October 2006 to put in place an emergency shelter policy within the meaning of Section 20 of the WMO.

RELEVANT INTERNATIONAL MATERIALS

I. The Council of Europe

26. 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."

27. Addressing the reception conditions of asylum-seekers under Article 3 of the Convention, the European Court of Human Rights ("the Court) has 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, judgment of 21 January 2011[Grand Chamber], §253. Also O'Rourke v. the United Kingdom, decision of 26 June 2001).

28. 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 moreover recommended the Member States 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 latters' position under national rules on the status of foreigners, and in the manner determined by national authorities."

II. The United Nations

a. The Universal Declaration of Human Rights

29. 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

30. 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.
>
> [...]."

31. When interpreting the ICESCR, the Committee on Economic, Social and Cultural Rights of the United Nations 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 - 8).

32. The said Committee further 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

a. General provisions

33. 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."

34. 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:
>
> [...];
>
> (c) social security and social protection of workers;
>
> [...];
>
> (j) the combating of social exclusion;
>
> […]."

35. Article 1 and 34§3 of the Charter of Fundamental Rights of the European Union 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."

b. Specific provisions

36. 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".

37. Union citizens holding a valid identity card or passport are entitled to a right of residence in another member state of the Union for up to three months (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77, "Directive 2004/38/EC; Article 6§1).

38. In order for Union citizens to be entitled to a longer residence period, they must fulfil the further criteria laid down in the Directive. They must either be workers or self-employed persons in the host member state or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the said state, as well as have comprehensive sickness insurance (Article 7, 12-14).

39. Article 24 of Directive 2004/38/EC sets out as follows on equal treatment:

1. “Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.”

40. With regard to residents from outside the EU, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44, "Directive 2003/109/EC"; amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending the Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, 19/05/2011, p. 1-4; repealed with effect from 21 July 2015 by Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international

protection, OJ L 180, 29/06/2013, p. 96-116) provides that long-term resident status may with certain conditions be granted to third-country nationals after five years' legal and continuous residence (Article 3§1, 4§1 and 5§1).

41. Finally, the minimum standards for the reception of asylum seekers in the EU are issued by means of 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/EC").

42. According to the Court of Justice of the European Union, "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" (C-79/13, *Federaal agentschap voor de opvang van asielzoekers v. Saciri* and others, judgment of 27 February 2014, §35).

43. 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. Lastly, the reception conditions are to be adjusted to the situation of persons with specific needs. Family unity, as well as the best interest of the child must be preserved (C-79/13, Saciri and others, cited above, §§35, 38, 40-41).

THE LAW

Preliminary considerations

As to the nature of the allegations

44. According to FEANTSA, the complaint raises issues pertaining to the human dignity of all the groups it concerns.

45. FEANTSA further maintains that the Charter should be interpreted in light of the current status of the relevant human rights law.

46. According to the Government, however, the complaint should not be examined on part of migrants in an irregular situation, who pursuant to a textual interpretation of the Appendix to the Charter do not fall within its scope.

47. The Committee takes note of these submissions and observes that the allegations raised relate not only to nationals of the Netherlands, but also to nationals of other States Parties to the Charter. The allegations furthermore partially concern migrants in an irregular situation.

As to the scope of the provisions evoked

48. The Committee reiterates that Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No.

31/2005, decision on the merits of 18 October 2006, §17; European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §89).

49. It recalls that in a decision where the allegations in respect of Article 16, in isolation or taken in conjunction with Article E, overlapped by and large with those made in respect of Article 31, there was no need to examine them with reference to Article 16 (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §158).

50. The Committee similarly recalls that the obligations related to the provision of shelter under Article 17 are identical in substance with those under Article 31§2 (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2003, decision on the merits of 20 October 2009, §71).

51. Pursuant to the above considerations and having regard in particular to the nature and lack of specificity of the allegations made under Article 16 and 17, the Committee considers the questions raised to overlap in a significant manner with those made under Article 31§2. It considers that there is no need for a separate examination of the complaint with regard to Articles 16 and 17.

52. Insofar as the allegations relating to the treatment of migrant workers in respect of legal proceedings on accommodation under Article 19§7 are concerned, the Committee notes that the right to equal treatment provided in Article 19§4(c) includes a right of appeal before an independent body against the relevant administrative decisions (Conclusions 2000, Finland). Having regard to the lack of arguments on the remedies available in particular to migrant workers, the Committee decides to examine the totality of the allegations relating to migrant workers under Article 19§4.

53. Under Article 31§2, the Committee will examine the availability of what is known as the community shelter as a measure to prevent and reduce homelessness, and will then proceed to the availability of emergency shelter to everyone as a form of emergency social assistance under Article 13 of the Charter.

54. The Committee further considers that the provision of shelter also to non-nationals is to be examined under Articles 31§2, 13 and 19§4. It holds that no separate issue arises under Article E of the Charter.

As to the scope ratione materiae of the complaint

55. Having regard to the argumentation by the parties under the Articles referred to, the Committee considers the substance of the complaint to concern the following aspects:

- alleged violation of Article 31§2, due to the allegations relating to the provision of community shelter;

- alleged violation of Article 13, due to the allegations relating to the unavailability of emergency shelter on the basis of need;

- alleged violation of Article 19§4, due to the allegations relating to the treatment of migrant workers and their families with regard to accommodation; and

- alleged violation of Article 30, due to the allegations relating to insufficient protection against poverty and social exclusion.

As to the applicable domestic law

56. Finally, as concerns the legislative amendment pending at the national level, the Committee recalls that within the collective complaints procedure, it bases its assessment on the domestic law and practice applicable on the date of the decision on the merits of the complaint (European Council of Police Trade Unions v. Portugal, Complaint No. 11/2001, decision on the merits of 21 May 2001).

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

57. 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

58. The Committee recalls, on the one hand, that the restriction of the personal scope of the Charter included in its Appendix should not be read in such a way as to deprive migrants in an irregular situation of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights, such as the right to life or to physical integrity or to human dignity. On the other hand, on application 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 (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2012, decision on the merits of 23 October 2012, §§28, 35).

59. It reiterates that in certain cases and under certain circumstances, the provisions of the Charter may be applied to migrants in an irregular situation (DCI v. Belgium, cited above, §35). In connection with complaints concerning children, the Committee has held that this is the case with regard to health (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §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).

60. It recalls in particular 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).

61. 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 present in an irregular manner, including children, for as long as they are within the jurisdiction of the state (Conclusions 2011, Ukraine). Pursuant to the above, Article 31§2 applies to migrants in an irregular situation.

B. ALLEGED VIOLATION OF ARTICLE 31§2 TO THE PERSONS CONCERNED BY THE COMPLAINT

A – Arguments of the parties

1. The complainant organisation

Access to shelter

62. FEANTSA observes that prior to the entry into force of the WMO (see paragraphs 22-23) on 1 January 2007, matters of social support were regulated by the Social Welfare Act (Welzijnswet). The Act included a principle known as “the national access principle”, according to which any homeless person could turn to any shelter services of the responsible municipalities regardless of his or her whereabouts in the Netherlands. FEANTSA maintains that during the enactment of the WMO, the Government decided to keep this principle unchanged.

63. FEANTSA further argues that the majority of the 43 municipalities apply a “local connection criterion” when deciding on access to shelter services. Homeless persons are obliged to establish having resided within the same region for the period of two out of three years prior to their application for a placement at an emergency shelter.

64. The local connection criterion affects, firstly, persons who have not registered themselves into the population register of their municipality and who for this or other reason remain without a permanent residence.

65. Secondly, the local connection criterion is problematic for former drug addicts, who have an established local connection but wish to escape their established locality for the purpose of starting a new life elsewhere.

66. Furthermore, migrants of all kinds, regardless of whether regular or irregular, are often not able to establish a local connection.

67. Lastly, FEANTSA maintains that the criterion is frequently unfulfilled by Roma and members of other marginalised groups, if they do not possess the necessary identity documents.

68. It underlines that no clear nationwide criteria exist on the granting and refusal of emergency shelter, but the local authorities may define their own criteria. The practices of the 43 responsible municipalities accordingly vary considerably and various criteria other than the local connection are applied when distributing shelter placements.

69. The cities of Amsterdam, Rotterdam, The Hague and Utrecht have moreover coordinated their legislation and policies on shelter services. Nevertheless, according to FEANTSA, practical and legal differences persist even between these cities.

70. It provides the example of the city of Amsterdam and notes that in order to receive accommodation in an emergency shelter in that city, an applicant must:

- be a national of the Netherlands or a regular migrant within the meaning of the Aliens Act 2000;
- not have a permanent residence;
- be at least 23 years old, even though similar criteria are applied to persons between 18 and 22 years of age;
- establish a local connection to the municipality;
- belong to one of the categories of persons receiving public mental health care, that is, persons with grave mental health issues, in connection with other types of problems; and
- be unable to find another housing solution.

71. According to FEANTSA, similar criteria are applied by other cities.

72. Furthermore, in some municipalities, the provision of shelter has been allocated to private service providers, which are entitled to decide on the attribution of shelter.

73. FEANTSA maintains that the Government cannot circumvent its responsibility for the implementation of the Charter by delegating the relevant powers to the local authorities or private actors.

74. Finally, as concerns the right to judicial review of the decisions relating to the attribution of shelter, FEANTSA takes note of a decision by the Central Appeals Court, according to which all decisions on shelter may be made subject to appeal. Not all those concerned are however aware of the possibility to seek judicial review. Information on the entitlement to appeal is often not clearly indicated in writing in the decisions on shelter. The homeless may moreover not know how to appeal a housing decision in practice. FEANTSA accordingly argues that the right to challenge a shelter decision is not effective in practice.

75. In light of the above statements, FEANTSA maintains that there is a violation of Article 31§2 on the grounds of insufficient access to shelter.

The quality and quantity of shelter available to vulnerable groups

76. FEANTSA further alleges that the number and quality of emergency shelters suitable for women, children and youth is insufficient.

77. It maintains that women, children and youth are vulnerable groups who cannot be safely accommodated in general shelters lacking sufficient privacy. Shelters on offer are often poorly maintained, even though certain requirements concerning their size, supervision, respect for privacy and the prevention of violence should be fulfilled especially on part of vulnerable groups.

78. FEANTSA observes that national and local regulations on hygiene and safety of shelters exist and are supervised by the authorities. The organisations providing shelters are responsible for the general quality, but, according to FEANTSA, the final responsibility for the quality of shelters lies with the Government.

79. Even though women's shelters are available, their number does not cover the demand. In certain municipalities women with children have been housed in hotels. FEANTSA observes that investments made in the provision of shelter to women have in such cases not led to an increase of permanent emergency shelter places. Living in a hotel moreover fails to sufficiently take into account the requirements of family life.

80. It observes that according to a statement made by the Government on 8 February 2013, a shortage of family shelter places exists. The Government furthermore stated that accommodation in a shelter could not be considered to be in the best interest of a child and suggested further research, as well as preventive measures in order to improve the situation.

81. FEANTSA further maintains that there are not enough emergency shelters suitable for adolescents. It notes that once 18 years old, adolescents fall out of the target group of the shelter services provided for children. Referring to a report from 2010 by the National Federation of Shelters (Federatie Opvang), FEANTSA notes that a total of 1,595 requests for support at adults' shelters were made by 12 to 17-year-old young people and 7,196 by 18- to 22-year-olds.

82. According to the complainant organisation, the Government fails to establish, whether the existing shelter places on offer for the vulnerable groups sufficiently meet the demand.

83. FEANTSA accordingly maintains that there is a violation of the Charter on the grounds of the insufficient quality and quantity of shelter available to children, young people, women and families.

2. The respondent Government

Access to shelter

84. The Government observes that assistance for the homeless is regulated in the WMO (see paragraph 22). According to Section 1, subsection 1(c) thereof, community shelter services include "temporary shelter, counselling, information and

advice to persons who, due to one or more problems, have voluntarily left or been forced to leave their homes and are incapable of supporting themselves independently".

85. Section 20, subsection 6 of the WMO furthermore sets out the so-called nationwide access principle by providing that "community shelter services funded by the municipalities are accessible to all those who live in the Netherlands" (see paragraph 23).

86. The Government maintains that the nationwide access principle guarantees access to shelter services to anyone in need, even though the said "services are intended for people who are genuinely unable to hold their own."

87. The 43 municipalities designated as regional authorities for shelter (see paragraph 25) have the responsibility for the factual provision of emergency shelter services, being "best placed to organise innovative forms of social support and develop individualised solutions". Each of them is charged with the provision of shelter services within a broader regional area.

88. The municipalities receive a governmental grant for the implementation of the tasks relating to shelter services. The total funding for shelter services, drug addiction policy and mental health care is approximately 300 million € per year.

89. The Government submits that according to guidelines drawn up by the Association of Netherlands' Municipalities (*Verening Nederlandse Gemeenten; "VNG"*), "anyone in the target group can apply to any municipality for community shelter services". According to the Government, the applicable criteria are based on the WMO, "which states that multiple problems and lack of self-sufficiency must be present".

90. It further notes that "other forms of assistance are available for persons in need who do not fall in the target group", such as general social services and debt reorganisation.

91. The Government maintained that in light of a monitoring report published in 2010 *(Monitor Plan van Aanpak Maatschappelijke Opvang; Rapportage 2010: Amsterdam, Rotterdam, Den Haag en Utrecht*. Netherlands Institute of Mental Health and Addiction. *Trimbos-instituut*, Utrecht 2011), an individualised support programme had been enrolled in 2010 by almost 2,300 newly registered homeless persons and by July 2011, almost 12,500 persons had been reached altogether.

92. In its submissions of 16 October 2012, the Government argued that the domestic situation fulfils the requirements of Article 31§2 of the Charter. In the submissions of 9 September 2013, it nevertheless referred to a recent survey on the nationwide accessibility of shelters ("*Opvang landelijk toegankelijk? Onderzoek naar regiobinding en landelijke toegankelijkheid van de maatschappelijke opvang*"; Netherlands Institute of Mental Health and Addiction. *Trimbos-instituut*, Utrecht, 2013).

93. Commissioned by the State Secretary for Health, Welfare and Sport, the survey is a response to "repeated signals about possible problems involving nationwide accessibility". The Government admits that pursuant to the survey,

nationwide access to shelter cannot be adequately guaranteed and that municipalities have been unable to provide shelter to everyone in need.

94. The Government observes that the mechanisms for the distribution of shelter should be improved and notes that it has requested the municipalities to ensure access to shelter by everyone even when no ties to a given region exist. If necessary, it will support the municipalities in clarifying the existing guidelines, as well as any agreements on the application of the local connection criteria.

95. Finally, in addition to the statutory task of shelter provision under the WMO, the Government observes that the municipalities may undertake additional measures for the purpose of reducing and preventing homelessness.

96. Insofar as the progression from shelter to more permanent housing is concerned, the Government states that the availability of housing and the special needs of those concerned affect the transition. It admits that the housing made available is insufficient in certain municipalities. This is "due primarily to increased demand, particularly for the transition from care facilities to supported housing", as well as to the recession.

The quality and quantity of shelter available to vulnerable groups

97. According to the Government, the actors providing shelter bear the primary responsibility for the quality of shelters. The central Government is responsible for the legislative framework and the funding of the shelter system, as well as for the creation of other enabling conditions through legislative, administrative and financial means.

98. A special policy is implemented concerning the vulnerable groups among the homeless, namely women, women with children and adolescents. Certain shelters are specially adjusted to meet the needs of these groups. Municipalities are furthermore obliged to make available a plan on shelter services on offer to women, including measures guaranteeing the quality of shelters.

99. The Government submits that access to women's shelters is subject to the nationwide access principle. A total of 35 authorities responsible for shelters provide sheltered accommodation to women. Women with children are normally admitted into women's shelters as victims of domestic violence or when in such a risk. They may however sometimes be placed in other types of shelters.

100. Earmarked governmental grants of 100 million € have been issued to certain municipalities for the provision of shelters for women. Over three million € have been invested into the Women's Shelter Improvement Plan for the years 2008-2013.

101. A legislative proposal on strengthening the municipalities' supervisory task and improving the quality of shelters is pending. The proposed legislation would require the municipalities to define by bye-laws the quality requirements applicable to assistance and those delivering it.

102. Insofar as young people are concerned, the Government observes that municipalities are responsible for coordinating activities relating to homeless youth. In this connection, it considers adolescents as "homeless youths under the age of 23 with multiple problems". Shelter services are provided to young people of 18 years or

older. The Government also observes that "homeless youths under the age of 18 fall under the Youth Care Offices".

103. In 2009, the Government announced its intention to eliminate homelessness among adolescents and by the end of the year 2010, registered approximately 8,000 homeless young persons. A number of policy measures have been undertaken for this end.

104. In its submissions of 16 October 2012, the Government concluded that the quality of the shelter services available to the vulnerable groups mentioned fulfilled the requirements of the Charter.

B. Assessment of the Committee

Access to shelter

105. The Committee first observes that the arguments examined under Article 31§2 concern access to shelter, as well as the quality and quantity of shelters for vulnerable groups. It considers these two aspects as interlinked but will, for the sake of clarity, examine them one after another.

106. It 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).

107. Under Article 31§2, the States Parties have undertaken to take measures to reduce homelessness with a view to 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 prevent them from returning to a situation of homelessness (Conclusions 2003, Italy).

108. The Committee reiterates that according to Article 31§2, shelter is to be offered to the homeless as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (DCI v. the Netherlands, cited above, §62).

109. With regard to persons regularly resident or regularly working within the territory of the state party concerned, the Committee recalls that the temporary provision of shelter, however adequate, cannot be considered a lasting solution. These persons 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).

110. However, as regards those irregularly present within the territory of a state party, there is no obligation on States to provide them with alternative accommodation. Eviction from shelter should accordingly be banned, as it would place the persons concerned, particularly children, in a situation of extreme helplessness that is contrary to the respect for their human dignity (DCI v. the Netherlands, cited above, §63).

111. Furthermore, in order for the national situation to be in conformity with Article 31§2, the States Parties must:

- adopt the necessary legal, financial and operational means of ensuring steady progress towards the goals laid down by the Charter;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage; and
- pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable (International Movement ATD Fourth World v. France, cited above, §60).

112. Moreover, even if a particular function has been delegated to local or regional authorities under domestic law, the States Parties remain responsible under their international obligations to ensure that their responsibilities are properly exercised (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29).

113. The Committee accordingly assesses the compliance with the Charter taking into account its application also by local bodies. Although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment. Even when implementing their strategic priorities, the local entities (regions, provinces and/or municipalities) must comply with the Charter (see, mutatis mutandis, The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012, §§58-59).

114. In order to progressively reduce homelessness, States need the necessary factual information to deal with the problem (European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23). Data should therefore be collected on the emergency shelter needs at the national level in an effective manner (European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §103).

115. With regard to the Netherlands, the Committee observes that the domestic situation has been found not to be in conformity with Article 31§2 of the Charter on the ground that there was no legal requirement to provide shelter to irregular migrant children for as long as they were in the jurisdiction of the Netherlands (DCI v. the Netherlands, cited above, §§64-65; Conclusions 2011, the Netherlands).

116. With regard to the current complaint, the Committee firstly notes that the Government has introduced financial measures for the purposes of guaranteeing access to shelter, as well as undertaken regular reviews of the national situation.

117. It similarly has put in place legislation regulating the access to shelter. The Committee nevertheless observes that the so-called community shelter is provided only to those who fulfil the criteria of the WMO, that is, to applicants with multiple

problems and a lack of self-sufficiency. In the non-binding guidelines issued by the VNG, this group of homeless persons is referred to as "the target group".

118. The Committee considers that the use of the local connection criteria further restricts the access to community shelter.

119. The Committee observes, furthermore, that the Government aims to guarantee the access to community shelter by means of the nationwide access principle for those applicants, who do not fulfil the local connection criteria.

120. Pursuant to the Government's submissions of 9 September 2013, the Committee nevertheless considers it established that the national access principle is not fully applied in practice. It notes that the Government has failed to supervise the provision of shelter by the responsible municipalities in a manner ensuring the provision of community shelter even in the lack of a local connection, as provided for in Section 20, subsection 6 of the WMO.

121. The Committee observes likewise that those accommodated in community shelters must fulfil any additional criteria in force for shelter distribution in the municipal area in question. It is undisputed that the additional criteria in question vary between the responsible municipalities.

122. The Committee observes that binding rules have not been issued to the responsible municipalities and to other providers of community shelters on the criteria for the granting of shelter. Taking note of the wording of Section 20 of the WMO, the Committee notes in particular that the current legislation in force would permit for such instructions to be issued. Similarly, no binding instructions have been issued on the distribution of responsibilities between the municipalities in cases where shelter is ultimately granted outside the municipality of first application.

123. The Committee further notes that pursuant to the survey referred to by the Government, the authorities acknowledge that the mechanism in force does not cover everyone with a valid claim for shelter (see paragraph 93).

124. According to the submissions of the parties, the governmental funding moreover only covers the provision of the community shelter to the target group.

125. The Committee notes that the municipalities may on their own initiative provide shelter also to those who do not fall within the target group. It observes, however, that neither party has provided information on a nation-wide practice to this end. The Committee is accordingly unable to establish that alternative shelter accommodation is available in sufficient numbers with regard to the estimated number of the homeless in the Netherlands, who remain outside the community shelter mechanism. It equally observes in this connection that no statistics are maintained on the estimated shelter demand.

126. Pursuant to the above observations, the Committee considers it established that a significant segment of the homeless is provided shelter neither in law, nor in practice. The Committee considers that it follows that the scope of the obligation to provide shelter has been restricted in an excessive manner.

127. The Committee further observes that nationals of the Netherlands, as well as all foreigners staying in the Netherlands in a regular manner have a right to be

offered more permanent housing than emergency shelter within a reasonable period under Article 31§2. With regard to this right, the Committee takes note of the Government's statement that social housing is indeed insufficiently available in certain areas, which is partially due to the general economic situation.

128. It recalls in this context that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. The States Parties are thus bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need protection the most (Conclusions 2009, General Introduction). The Committee holds that the States Parties should match the increase in need of shelter and the related social housing regardless of the economic situation in order to achieve the steady progress towards the elimination of homelessness, as required under Article 31§2 of the Charter.

129. In view of the foregoing, the Committee considers that the legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness.

The quality and quantity of shelter available to vulnerable groups

130. Insofar as the quantity of shelter available to vulnerable groups is concerned, the Committee first takes note of the measures taken for the purpose of ensuring access to shelter by women and women with children. Regardless of the significant steps taken, the Committee notes that according to FEANTSA, the number of special shelter places on offer for these groups remains insufficient.

131. It observes that the Government has not provided data establishing the sufficiency of shelter places reserved for the vulnerable groups, nor excluded that women may be sheltered in general shelters. The Committee additionally notes that only 35 of the 43 responsible municipalities maintain special women's shelters. It further observes that both parties refer to an established, genuine need for additional family shelters. No specific information is moreover provided on the situation of children in shelters.

132. Pursuant to the information available to it, the Committee considers that the shelter provided for women and women with children fails to fulfil the requirements of Article 31§2 with regard to quantity.

133. With regard to the availability of shelter placements, the Committee observes that once 18 years old, persons concerned are also divided into those who fall within the target group and those who do not.

134. It observes that no information has been provided to the Committee on the situation of those young homeless people, who do not have multiple problems and thus are not eligible for a placement in youth shelter. It therefore cannot establish, whether these adolescents are provided with sufficient shelter or not.

135. Finally, with regard to the quality of the shelters available to vulnerable groups, the Committee underlines that emergency shelters must always meet the safety requirements established by the Committee (see paragraph 108). The Committee also considers that States Parties should provide members of vulnerable

groups in shelters that are adapted to the needs of those belonging to such groups, as well as ascertain the availability and suitability of special shelters.

136. It follows that the quality and quantity of shelters available to vulnerable groups do not fulfil the requirements of the Charter.

137. Consequently, the Committee holds that there is a violation of Article 31§2 of the Charter.

SECOND PART: THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CHARTER

138. 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 TO THE PERSONS CONCERNED BY THE COMPLAINT

139. In light of the Appendix to the Charter, foreigners who are nationals of States Parties to the Charter and are regularly residing in the territory of another state party and lack adequate resources, enjoy an individual right to appropriate assistance under Article 13§1 on an equal footing with nationals, i.e. beyond emergency assistance (Statement of Interpretation on Article 13, General Introduction to Conclusions 1996; Conclusions 2013, Malta). Conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed (Conclusions 2013, France).

140. Article 13§1 of the Charter concerns also refugees and stateless people (Conclusions 2013, Bosnia and Herzegovina).

141. With regard to Article 13§4, 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).

142. Article 13§4 is accordingly applicable in respect of persons covered by the complaint.

143. n this connection, 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.

A. ALLEGED VIOLATION OF ARTICLE 13 OF THE CHARTER

A – Arguments of the parties

1. The complainant organisation

144. FEANTSA alleges that the legislation and practice in the Netherlands do not fulfil the requirements of Article 13 of the Charter insofar as the provision of emergency accommodation and other emergency assistance to those in need is concerned. As indicated in its arguments under Article 31§2, a person is required to have grave mental problems in order to be granted shelter. FEANTSA claims that the conditions for the distribution of emergency shelter are therefore too restrictive.

145. Regardless of the national access principle concerning the granting of shelter throughout the country (see paragraph 23), according to the survey into the provision of emergency shelter (see paragraphs 92-93) the principle is not always implemented in practice.

146. FEANTSA considers that the significance of need for protection alone is not recognized in connection with the distribution of shelter as emergency social assistance. An assessment of need should moreover be undertaken early enough in order to prevent emergency situations from arising.

147. After 2007, the municipalities have sought to put in place a code of conduct for the application of the local connection criterion so as to ensure that emergency shelter is not denied to anyone in need. A set of guidelines has been published by the VNG (see paragraph 89). They have nevertheless not abolished the differences in the provision of shelter services, as they are not legally binding and are applied by the municipalities on a voluntary basis.

148. It has not been established how many persons have remained without shelter accommodation. According to FEANTSA, the numbers of available emergency shelter places should be compared to the number of applicants in need of shelter in order to establish the need for emergency shelter.

149. FEANTSA additionally argues that a person in urgent need should not have the burden of proof in establishing his or her entitlement to shelter.

150. It further maintains that the authorities do not automatically assess the need of EU citizens for shelter or other emergency assistance. No category of applicants should be excluded from the assessment of need.

151. As concerns the objective of avoiding abuse of emergency assistance, referred to by the Government, FEANTSA observes that due to the quality of the

existing emergency shelters, they are not an option for anyone who may find other accommodation.

152. The authorities are moreover prohibited by Section 10 of Aliens Act 2000 from granting benefits to migrants in an irregular situation. Migrants in an irregular situation are excluded from the scope of emergency shelter services and alimentary allowances. When the return of an irregular migrant has been unsuccessful, the provision of shelter is discontinued and the migrant ends up living on the streets.

153. According to FEANTSA, the relevant legislation is strictly applied by the authorities. An adult migrant in an irregular situation can only gain access to emergency shelter by an exceptional court order and only when no longer able to sustain oneself on the streets due to a severe medical condition.

154. The current legislation and practice accordingly leave migrants in an irregular situation to depend on charity organisations or private individuals, making them vulnerable to exploitation.

155. In view of the above, FEANTSA submits that the legislation and practice of the Netherlands on emergency assistance in general and the emergency shelter services in particular amount to a violation of Article 13 of the Charter.

2. The respondent Government

156. In its submissions of 16 October 2012, the Government maintained its emergency shelter policy to be in line with the requirements of Article 13. It observed that the effect of the criteria laid down in the WMO was to "restrict access to community shelter services to those persons in the target group".

157. The Government considered those in the target group to be "in such a serious and acute situation that he/she requires emergency shelter". It considered that the said assessment of need was not too strict.

158. It furthermore considered the nationwide access principle to constitute "a firm guarantee of access to community shelter services for those in need".

159. With regard to emergency shelter granted to migrants in an irregular situation in particular, the Government argues being opposed to the idea of granting rights to benefits to those staying within its jurisdiction in an irregular manner when obliged to leave the territory of the Netherlands. Allowing such migrants to benefit from assistance would facilitate the prolongation of their irregular residence, as well as create a false impression on legality of stay.

160. Furthermore, in Section 8 of the WMO (see paragraph 22), the entitlement by foreigners to benefits and assistance has been linked to regular residence status according to what is known as “the linkage principle” (*koppelingsbeginsel*).

161. The Government additionally observes that in May 2007, an administrative agreement was concluded between the Government and the VNG, stipulating that the municipal provision of emergency shelters to migrants in an irregular situation would no longer be financed by the central Government.

162. The municipalities may however continue to provide shelter services to migrants in an irregular situation at their own cost. The Government provides the

example of two municipalities and refers to churches and non-governmental organisations as providers of this type of shelters.

163. Furthermore, as confirmed by the Central Appeals Court for Public Service and Social Security, a request for emergency shelter may be refused after a decision has been made obliging an irregular migrant to leave the Netherlands. The only exception to this rule is cases where the refusal of shelter would breach Article 8 of the Convention taking into account, inter alia, whether a person belongs to a vulnerable group pursuant to an objective medical assessment, whether the refusal would threaten physical or mental health, as well as the legality of the person's stay in the state party.

164. The Government maintains that irregular migrant families with children, to whom shelter has been provided in the context of their asylum application, can be accommodated in a family facility after their stay has become irregular in nature.

165. The family facilities are a form of restrictive accommodation, where a weekly sum is provided per family member to cover any costs relating to, inter alia, food and clothing. The provision of shelter ends solely when the family leaves the Netherlands or when the youngest child reaches the age of 18 years.

166. In situations of an acute emergency, an irregular migrant may apply for assistance from the municipal police. The police may provide shelter, refer the applicant to private providers or contact the Repatriation and Departure Service for the purpose of providing shelter in a family facility of other restrictive form of accommodation.

167. The Government finally observes that pursuant to what is known as "the cold weather scheme", accommodation and a meal is provided by the responsible authority for shelters to all such homeless individuals, who cannot get other help. Accommodation is provided regardless of the regularity of their residence status during a prolonged period of cold weather.

168. The Government nevertheless acknowledges that pursuant to the latest study on the availability of shelter in general, shelter has not always been available nationwide to everyone in need.

A – Assessment of the Committee

169. The Committee recalls that the States Parties have undertaken, under Article 13§1 of the Charter, to accord assistance to persons in need as of right. They are not merely empowered to grant assistance as they think fit, but are under an obligation, which they may be called on in court to honour (Conclusions I, 1969, Statement of interpretation).

170. Under Article 13§1, the Committee considers benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need (Conclusions 2013, Bosnia and Herzegovina). This does not mean that specific benefits cannot be provided for the most vulnerable categories of the population, as long as persons who do not fall into these categories are entitled to appropriate assistance (Conclusions 2013, Hungary).

171. Pursuant to Article 13§4 of the Charter, no conditions on the length of presence on the territory of the state party in question can be set on the right to emergency assistance and those concerned must be provided with assistance to cope with an immediate state of need. 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 (Conclusions 2013, Montenegro).

172. Under Article 13, States are bound to guarantee an enforceable individual right to social and medical assistance, including the right to appeal decisions concerning assistance before an independent judicial body (Conclusions 2013, Andorra).

173. The Committee has already noted under the reporting mechanism that all persons regularly residing in the Netherlands without adequate financial resources to meet their essential living cost have access to social assistance (Conclusions 2013, the Netherlands). It has nevertheless been unable to establish that all foreigners without resources, whether staying regularly in the Netherlands or not, would have a legal right to the satisfaction of their basic human material needs (food, clothing, shelter) in situations of emergency (Conclusions 2009; Conclusions 2013, the Netherlands).

174. It observes, with regard to the present complaint, that pursuant to the survey referred to by the Government, emergency shelter is not systematically made available to all categories of persons covered by Article 13 with a valid claim for shelter (see paragraph 93).

175. The Committee takes into account that the homeless who do not belong to the target group in general have at least one serious problem in addition to the fact of being homeless. It furthermore notes having received no information on a comprehensive, nation-wide practice of granting another type of shelter to this group of homeless. Shelter to this alternative group is furthermore not financed by the central Government.

176. Even though other forms of emergency assistance are available to those who do not fall within the target group, the Committee is unable to establish how recourse to the general social services or a debt reorganisation application would help to ensure immediate emergency housing to a homeless person.

177. Pursuant to the most recent national study, the national access principle has not been effectively applied in practice. The Committee considers that those unable to establish a local connection to a responsible municipality have at times not been provided with emergency shelter.

178. Insofar as the criteria for establishing need are concerned, the Committee observes that even though the need for shelter placements cannot be statistically measured, it is nevertheless possible to provide an estimation on the basis of administrative data. It notes that no such estimations have been provided by either of the parties.

179. With regard to emergency shelter provided to migrants in an irregular situation, the Committee observes that according to the Government, such emergency protection is not provided in the overwhelming majority of cases. According to the Government, emergency shelters are furthermore reserved to those genuinely in serious and acute need. The Committee first observes that in light of its case-law, the aim as such is in keeping with Article 13 (see paragraph 171 above).

180. The Committee likewise 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.

181. 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 was 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.

182. The Committee further holds that even when maintaining the current aims of migration policy, less onerous means 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 very basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a precarious situation.

183. It 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.

184. The Committee observes in this regard that also other international obligations require the States Parties to provide basic amenities and shelter to everyone within the jurisdiction of a State. In particular it takes note of the interpretation of the Court of Justice of the European Union, according to which the observance of fundamental rights and the protection of human dignity require that amenities necessary for a dignified standard of living be granted to those within the scope of application of Directive 2003/9/EC (see paragraphs 42-43). The Committee notes, however, that the scope of application of Article 13§4 of the Charter is wider and extends also to those whose asylum claim has already been rejected.

185. It further recalls that the right to emergency shelter and to other emergency social assistance is not limited to those belonging to vulnerable groups, but extends to all individuals in a precarious situation pursuant to their human dignity.

186. As concerns the access to emergency medical care of migrants in an irregular situation, the Committee recalls that the emergency medical care made available to those who are not lawfully present in the country fulfils the requirements of Article 13§4 of the Charter (Conclusions 2009, the Netherlands). Nothing in the material enclosed in the complaint leads the Committee to a different conclusion.

187. With regard to the right to appeal in matters concerning the granting of emergency assistance, the Committee notes that no arguments provided by the Government establish the efficiency of this right in practice. It therefore takes note of

the arguments by the complainant organisation, according to which this right to a judicial review is not effective in practice. The Committee considers a functioning appeal mechanism before an independent judicial body as crucial for the proper administration of shelter distribution. It likewise holds that it is for the Government to ensure that this right is made effective also in practise.

188. In the view of the above, the Committee holds that there is a violation of Article 13§§1 and 4 of the Charter.

THIRD PART: THE ALLEGED VIOLATION OF ARTICLE 19§4 OF THE CHARTER

189. Article 19§4(c) of the Charter reads as follows:

> "**Article 19: The right of migrant workers and their families to protection and assistance**"
>
> "Part I: Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party."
>
> "Part II: With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:
>
> […]
>
> 4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
>
> […]
>
> c. accommodation;
>
> […]."

A. APPLICABILITY OF ARTICLE 19 TO THE PERSONS CONCERNED BY THE COMPLAINT

190. The Committee recalls that Article 19§4(c) obliges the States Parties to secure the rights provided in the said provision to migrant workers who are within their territories in a regular manner. It reiterates that migrants in an irregular situation do not *prima facie* fall within the scope of Article19§4(c) (ERRC v. France, cited above, §111).

191. The Committee accordingly examines the complaint insofar as it concerns persons who as nationals of other States Parties to the Charter have engaged themselves in gainful occupation within the Netherlands. Pursuant to the wording of Article 19, the protection granted to migrant workers also extends to the members of their families.

A. ALLEGED VIOLATION OF ARTICLE 13 OF THE CHARTER

A. Arguments of the parties

1. The complainant organisation

192. FEANTSA alleges that the lack of emergency shelters for migrant workers and their families amounts to a violation of Article 19§4 of the Charter.

193. In the event of loss of employment, an EU national is expected to return to their Member State of origin without resorting to shelter services. The same is expected of migrant workers in a regular situation from a non-EU country that is a party to the Charter.

194. FEANTSA maintains that the legislation and practice in force amount to a violation of Article 19§4(c) of the Charter, because the treatment accorded to migrant workers and their families in respect of accommodation in the Netherlands is less favourable than that of nationals.

2. The respondent Government

195. The Government maintains that the right of citizens of the European Union to reside in the Netherlands is conditional upon their ability to support themselves.

196. It observes that recent developments in various municipalities have created a pressing need for regulating access to community shelters. The Government submits that “in the major cities especially, community shelter services are used by increasing numbers of EU citizens – usually but not always from Central and Easter European member states. Local authorities have noticed that these individuals increasingly regard the various forms of night shelter as low-budget accommodation.”

197. Pursuant to an amendment introduced to Section 8 of the WMO, from 1 January 2014 onwards only foreigners with regular residence status have been eligible for community shelter (see paragraph 22). According to paragraph 2 of the provision, shelter is as a rule not made available to those who fall within the scope of application of Article 24§2 of Directive 2004/38/EC (see paragraph 39).

198. The Government submits that this new provision concerns EU citizens who have stayed in the Netherlands for under three months and observes that the free movement of persons within the Union should not result in travel to other Member States for the purpose of having to immediately resort to shelter services.

199. Municipalities may nevertheless independently offer shelter to EU citizens.

200. It however notes that even before the entry into force of the legislative amendment, “many municipalities [were] already refusing EU citizens who do not fall in the target group access to community shelter services in the absence of genuine need or multiple problems”.

201. The Government nevertheless argues that regardless of the above limitations, the domestic legislation and practice fulfil the requirements of Article 19 of the Charter.

B. Assessment of the Committee

202. The Committee recalls that under Article 19§4, the States Parties are required to pursue a positive and continuous course of action towards more favourable treatment of migrant workers (Conclusions I, 1969, Italy).

203. It is not enough for a Government to prove that no discrimination exists in law alone, but the Government is obliged to prove, in addition, that no discrimination is practiced in fact or to inform the supervisory organs of the practical measures taken to remedy it (Conclusions 1973, Statement of interpretation on Article 19§4).

204. The right to equal treatment provided in Article 19§4(c) can furthermore only be effective if there is a right of appeal before an independent body against the relevant administrative decisions (Conclusions 2000, Finland).

205. The Committee first notes that pursuant to the wording of Section 8 of the WMO, access to shelter may be provided also to foreigners who are lawfully resident in the Netherlands. Furthermore, subsections 3 and 4 of the said provision enable the exceptional provision of emergency shelter to those in an irregular situation.

206. The Committee however observes that instead of referring to measures taken to ensure the equal access to emergency accommodation for migrant workers and their families, the Government refers to legislation adopted in order to limit the access to emergency accommodation by this group. By means of Section 8, subsection 2 of the WMO, the right to emergency shelter has especially been proscribed in respect of EU citizens during the first three months of their residence in the Netherlands.

207. The Committee observes that the restriction pursues an aim of social and employment policy, as it purports to reserve the right of free residence during the first three months to those EU citizens who are able to sustain themselves and their families without needing to resort to the social assistance system of the receiving Member State. In this context, and taking into account in particular the short duration of the restriction, the Committee considers the limitation is proportionate with regard to the aim it pursues, as well as in light of the rights to emergency social assistance of those individuals, to whom it is applied.

208. Insofar as the right to appeal to an independent body in decisions relating to the distribution of accommodation to migrant workers and their families is concerned, the Committee refers to its findings under Article 13 and holds that the situation also amounts to a violation of Article 19§4(c) (see paragraph 187).

209. In the view of the above, the Committee holds that there is a violation of Article 19§4(c) of the Charter.

FOURTH PART: THE ALLEGED VIOLATION OF ARTICLE 30 OF THE CHARTER

210. Article 30 of the Charter reads as follows:

> "**Article 30: The right to protection against poverty and social exclusion**"
>
> "Part I: Everyone has the right to protection against poverty and social exclusion."

"Part II: With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effecttive access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary."

A. APPLICABILITY OF ARTICLE 30 TO THE PERSONS CONCERNED BY THE COMPLAINT

211. With regard to migrants in an irregular situation, the Committee observes that States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion. The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable with regard to migrants in an irregular situation (DCI v. Belgium, cited above, §145-147).

A. ALLEGED VIOLATION OF ARTICLE 30 OF THE CHARTER

A. Arguments of the parties

1. The complainant organisation

212. FEANTSA alleges that the legislation and practice with regard to the distribution of shelter in the Netherlands are also in violation of Article 30 of the Charter.

213. It maintains that the lack of coordination between the responsible municipalities hinders the progression by the homeless into more permanent housing.

214. Negotiations conducted between various authorities should not be considered as sufficiently concrete and practical measures aimed at assisting a homeless person in finding shelter.

215. FEANTSA further notes that a list of contact persons has been compiled for situations where an applicant is to be transferred to another region for shelter, but maintains that the list has not been recently updated and is rarely used. It does in any case not guarantee the necessary coordination between the relevant national authorities.

216. FEANTSA accordingly maintains that the situation described under the previous Articles also amounts to a violation of Article 30 of the Charter.

2. The respondent Government

217. The Government observes that the VNG has drawn up guidelines on the nationwide access to shelter, as well as compiled a list of contact persons for cases where shelter is not provided in the municipality where the first request is made (see paragraphs 89, 147).

218. It nevertheless admits that pursuant to the latest survey on the availability of shelter, it has been found that there is room for improvement with regard to the making of explicit agreements between municipalities and institutions on the provision of emergency shelter (see paragraphs 92-93).

B. Assessment of the Committee

219. The Committee recalls that the fact of living in a situation of poverty and social exclusion violates the dignity of human beings (International Movement ATD Fourth World v. France, cited above, §163).

220. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires the States Parties to adopt an overall and co-ordinated approach to promote access to housing by those living or who risk living in social exclusion or poverty (Conclusions 2003, France).

221. The Committee reiterates that such a co-ordinated approach should consist of an analytical framework, as well as of a set of priorities and measures to prevent and remove obstacles to access to fundamental social rights. Monitoring mechanisms should be put in place, involving all relevant actors, including the civil society and persons affected by exclusion and poverty. Policies should moreover be linked and integrated in a consistent way, that is in a manner reaching beyond a sectorial or a targeted group approach (International Movement ATD Fourth World v. France, cited above, §164).

222. Any measures taken should furthermore be based on adequate resources, as well as be adequate in terms of quality and quantity with regard to the nature and extent of poverty and social exclusion in the state concerned (International Movement ATD Fourth World v. France, cited above, §167-168). As long as poverty and social exclusion persist, any measures should be met with an increase in the resources deployed for this purpose (Conclusions 2003, France).

223. Particular attention should be given to the effectiveness of the policies, measures and actions undertaken (Conclusions 2003, France).

224. The Committee further 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). By reaffirming this human rights approach, the Committee emphasises the very close link between the effectiveness of the right recognised by Article 30 and the enjoyment of the rights recognised by other provisions, such as Articles 13 and 31 of the Charter (Statement of Interpretation on Article 30, Conclusions 2013).

225. The Committee recalls that a policy with respect to housing does not as such satisfy the requirements of Article 30, but the States Parties must promote an effective access to housing by those living or who risk living in social exclusion or poverty (International Movement ATD Fourth World v. France, cited above, §169).

226. As concerns the approach adopted in combating poverty and social exclusion in the field of sheltered accommodation in the Netherlands, the Committee observes that various policy programmes on shelters have been put in place. Resources have furthermore been allocated for the implementation of these policies. The Committee

notes that the Government submits having reached 12,500 homeless adults and 8,000 youths when implementing such programmes (see paragraphs 91 and 103).

227. With regard to monitoring and assessment, it notes that the Government refers to the involvement of non-governmental organisations and private actors in the implementation of the housing policies. It equally provides examples on measures particularly aimed at improving the housing situation of women and young people.

228. The Committee takes note of the above efforts but notes that the limited impacts of the measures have been described in the latest national survey (see paragraph 92), according to which the municipalities have been unable to provide everyone in need with shelter.

229. The Committee considers that in light of the findings made under Articles 31§2, 13§§1 and 4, as well as 19§4, it follows that the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not offered shelter regardless of genuine need. The Committee considers that this is not in keeping with the obligation to prevent poverty and social exclusion.

230. It furthermore appears from the abovementioned survey that measures to improve the coordination between the responsible municipalities were envisaged for addressing the situation. However, in light of the information at its disposal, the Committee finds that the coordination between the responsible authorities is currently insufficient for the purposes of Article 30.

231. The Committee therefore holds that there is a violation of Article 30 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously, that there is a violation of Article 31§2 of the Charter;
- unanimously, that there is a violation of Article 13§§1 and 4 of the Charter;
- unanimously, that there is a violation of Article 19§4(c) of the Charter; and
- unanimously, that there is a violation of Article 30 of the Charter.

Lauri LEPPIK Rapporteur	Luis JIMENA QUESADA President	Régis BRILLAT Executive Secretary

In accordance with Rule 30§2 of the Rules of the Committee:

- a dissenting opinion of Luis JIMENA QUESADA, is appended to this decision.

PARTLY DISSENTING OPINION OF LUIS JIMENA QUESADA

1. I agree with the majority of the Committee in concluding that there is a violation of Articles 31§2, 13§1 and §4, 19§4(c) and 30 of the Charter.

2. However, I am unable to subscribe to the majority conclusion of the Committee on the absolute exclusion of migrants in an irregular situation from the applicability of Article 30 of the Charter. In particular, the Committee holds that "with regard to migrants in an irregular situation, the Committee observes that States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion. The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable with regard to migrants in an irregular situation (DCI v. Belgium, cited above, §145-147)" (§ 211).

3. It is true that the Committee adopted such an approach in the above mentioned case (DCI v. Belgium, Complaint No. 69/2012, decision on the merits of 23 October 2012). Nevertheless, the Committee had significantly nuanced this approach in its more recent Statement of interpretation on Article 30 (Conclusions 2013, January 2014) by holding:

- On the one hand, that "in this context, by reaffirming this human rights approach, the Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty".

- And on the other hand, that "this approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30 (EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59); but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30. Indeed, the conclusion reached by the Committee on the existence of one or several violations of these provisions should not be conceived as an exception which confirms the existence of a generally satisfactory overall and co-ordinated approach, but rather as a substantial weakness affecting an essential pillar (or several) of the fundamental obligations of States Parties contained in Article 30 in relation to protection against poverty and social exclusion".

4. In the light of the above, I consider that both criteria are fulfilled, that is to say:

- Firstly, the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by Articles 13§§1 and 4 and 31§2 of the Charter is evident. From this point of view, it appears to me paradoxical to contend that, in the present case, there is a violation of Articles 31 and 13 also in relation to migrants in an irregular situation (§§137 and 188) after logically having argued that both provisions are applied to them (§§61 in fine and 142) and, at the same time, to hold that Article 30 is not applicable to these persons (§ 211).

- Secondly, in my view it is clear that the intensity and seriousness of the violation of Articles 31 and 13 (in this sense, the Committee further recalls in §185 that “the right to emergency shelter and to other emergency social assistance is not limited to those belonging to vulnerable groups, but extends to all individuals in a precarious situation pursuant to their human dignity”) did not imply an automatic operation but it rather had necessarily to lead to a violation of Article 30 of the Charter.

5. Indeed, in having concluded the non-applicability of Article 30 (and, therefore, the non-violation of this provision) in such circumstances, the human rights approach appears to be meaningless. Under this perspective, it also seems paradoxical that the Committee further 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). By reaffirming this human rights approach, the Committee emphasises the very close link between the effectiveness of the right recognised by Article 30 and the enjoyment of the rights recognised by other provisions, such as Articles 13 and 31 of the Charter (Statement of Interpretation on Article 30, Conclusions 2013)” (§ 224).

I am actually inclined to believe that this is more than a mere discourse.

6. For these reasons, in the instant case I consider that the Committee would have had to conclude that, like Articles 13 and 31, Article 30 of the Charter was also applicable with regard to migrants in an irregular situation and, moreover, that there was a violation of this Article.