

Fischer
Advocaten

sociaal economische
 rechten

Using Collective Complaints in National Courts in The Netherlands

by

Pim Fischer and Joris Sprakel

w.g. fischer
j. sprakel

What is a collective complaint?

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

Collective complaints procedure

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

Background

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

Background (continued)

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

Guidance “project”

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

Fischer
Advocaten

sociaal economische
rechten

Political debate?



w.g. fischer
j. sprakel

Outcome?



Current situation

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

Fischer
Advocaten

sociaal economische
 rechten

Questions?

w.g. fischer
j. sprakel