



FEANTSA

Mr Regis Brillat, Executive Secretary
European Committee of Social Rights
Directorate General of Human Rights – DG II
Council of Europe
Agora Building
Avenue de l'Europe 67075
Strasbourg Cedex
France

COLLECTIVE COMPLAINT

in accordance with the Additional Protocol to the European Social Charter

Providing for a System of Collective Complaints

FEANTSA v. THE NETHERLANDS

Bruxelles, 2 July 2012

■ European Federation of National Associations Working with the Homeless AISBL

Fédération Européenne d'Associations Nationales Travaillant avec les Sans-Abri AISBL

194 Chaussée de Louvain ■ 1210 Brussels ■ Belgium ■ Tel.: +32 2 538 66 69 ■ Fax: +32 2 539 41 74 ■ office@feantsa.org ■ www.feantsa.org

Contact: Samara.jones@feantsa.org and Freek.spinnewijn@feantsa.org

Contents

1. PURPOSE OF THE COMPLAINT	3
2. ADMISSIBILITY	3
2.1 Defendant State	3
2.2 Articles concerned	3
2.3 Status of FEANTSA.....	5
3. COMPLAINT	5
4. THE NETHERLANDS LEGISLATION AND POLICY	6
4.1 The Law.....	6
4.2 The principle of ‘nationwide access’	6
4.3 Local legislation and practice	6
5. ISSUES UNDER THE REVISED EUROPEAN SOCIAL CHARTER	7
5.1 Issues related to access	7
5.1.1 Conditionality of access to (emergency) shelter – Local Connection	7
5.1.2 Conditionality of access to (emergency) shelter – Other Criteria.....	8
5.1.3 EU and other lawful migrant workers	8
5.1.4 Exclusion of irregular migrants.....	9
5.2 Availability and quality issues	10
5.3 Progression of the housing situation of homeless people	10
5.4 Effective remedy	11
6. NON-COMPATIBILITY WITH THE REVISED EUROPEAN SOCIAL CHARTER	12
6.1 Article 13 Revised European Social Charter	12
6.1.1 Limitations of access.....	12
6.1.2 Residency	13
6.2 Connection with Article 19 Revised European Social Charter.....	13
6.2.1 Availability and quality.....	14
6.2.2 Appeal.....	14
6.3 Article 31 Revised European Social Charter	15
6.4 Article 16 and 17 Revised European Social Charter	16
6.5 Article E Revised European Social Charter	16
7. CONCLUSION	16

1. PURPOSE OF THE COMPLAINT

The European Federation of National Organisations Working with the Homeless (hereinafter FEANTSA) asks the European Committee of Social Rights (hereinafter the Committee) to find that The Netherlands legislation, policy and practice regarding sheltering the homeless is not compatible with the relevant provisions of the Revised Social Charter (hereinafter the Revised Charter).

2. ADMISSIBILITY

2.1 Defendant State

The Netherlands is Party to the Revised Charter and has accepted the collective complaints procedure by signing the 1995 Additional Protocol (ratified 3 May 2006).

2.2 Articles concerned

Article 13 - the right to social and medical assistance;

Article 16 - The right of the family to social, legal and economic protection;

Article 17 - The right of children and young persons to social, legal and economic protection;

Article 19 - The right of migrant workers and their families to protection and assistance;

Article 30 - The right to protection against poverty and social exclusion;

Article 31 - the right to housing;

Alone or read in conjunction with Article E on non-discrimination.

Article 13 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. [...]

3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European CRC on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 16 of the Revised Charter reads as follows:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1a - to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

1b - to protect children and young persons against negligence, violence or exploitation;

1c - to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. [...]

Article 19 of the Revised Charter reads as follows:

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;

[...]

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

[...]

Article 30 of the Revised Charter reads as follows:

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 effective 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.

Article 31 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;

2. to prevent and reduce homelessness with a view to its gradual elimination;

3. to make the price of housing accessible to those without adequate resources.

These pledges can be read alone or in conjunction with the non-discrimination clause of Article E.

Article E of the Revised Charter reads as follows:

The enjoyment of the rights set forth in this Revised Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

2.3 Status of FEANTSA

FEANTSA currently has more than 100 member organisations, working in close to 30 European countries, including 25 EU Member States. Most of FEANTSA's members are national or regional umbrella organisations of service providers that support homeless people with a wide range of services, including housing, health, employment and social support. They often work in close co-operation with public authorities, social housing providers and other relevant actors.

FEANTSA has consultative status with the Council of Europe, and as such is one of the organizations authorized to lodge collective complaints under the Revised Charter.

For the purpose of the procedure Mr. Joris SPRAKEL LL.M is appointed by FEANTSA as adviser as mentioned in Rule 25-2 of the Rules of Procedure of the Committee.

3. COMPLAINT

The Netherlands legislation, policy and practice regarding sheltering the homeless is not compatible with the relevant provisions of the Revised Charter. In the years following the implementation of the new legislation in The Netherlands various issues have come to light:

- (1) Access to (emergency) shelter is made conditional to a local connection criterion or other criteria, impacting on the rights of homeless persons and (un)lawfully residing migrant(s) (workers);
- (2) The availability and quality of (emergency) shelters is inadequate, negatively impacting women, children, and young persons (i.e. vulnerable persons);
- (3) Due to a lack of coordination between the 43 responsible municipalities, there is a hindrance to the progression in the housing situation of the homeless.

These three issues will be dealt with after a brief explanation of The Netherlands legislation and policy concerning (emergency) shelter and housing.

4. THE NETHERLANDS LEGISLATION AND POLICY

4.1 The Law

Emergency shelter in The Netherlands is arranged at the local government level. The relevant national law, the *Wet Maatschappelijke Ondersteuning*¹ (hereinafter the Social Support Act), provides for emergency shelter in Article 20 Social Support Act. Through Article 20 Social Support Act, the national government provides appointed municipalities with funding to arrange for emergency shelter ('maatschappelijke opvang'). The municipalities in turn have to organize the actual (emergency) shelter.

A total of 43 municipalities have been appointed to arrange for the (emergency) shelter within the meaning of the Social Support Act. The 43 municipalities have been appointed through the *Besluit Maatschappelijke Ondersteuning*², Based upon this mandate the local municipalities have to develop a policy for arranging emergency shelter.

4.2 The principle of 'nationwide access'

Before the introduction of the Social Support Act on 1 January 2007, emergency shelter was provided through the *Welzijnswet* (hereinafter the Welfare Act). The leading principle of the Welfare Act was the so-called 'nationwide access' principle ('landelijke toegankelijkheid'). In practice this meant that a homeless person could request emergency shelter in any of the appointed municipalities. In the process of drafting the Social Support Act, it was emphasised that the 'nationwide access' principle was to be maintained in the replacement law (the Social Support Act) and in practice.

4.3 Local legislation and practice

As mentioned before, there are 43 municipalities that have a mandate and duty to arrange the (emergency) shelter of homeless persons. This has resulted in a wide variety in local legislation and practice. Some local governments have 'outsourced' the mandate to private parties who subsequently decide on who to provide with shelter. In these municipalities there is usually little regulation, except maybe a covenant with the shelter organization. Other cities, for example the so-called G4 (Amsterdam, Rotterdam, The Hague and Utrecht) have come up with a common outline in their legislation and policies. But still differences in legislation and practice remain.

¹ Act of 29 June 2006, Stb. 2006, 351.

• ² An Order in Council ('Algemene Maatregel van Bestuur') in connection with the Social Support Act, d.d. October 2, 2006, (Besluit van 2 oktober 2006, houdende regels met betrekking tot de uitkeringen ten behoeve van beleid op het terrein van openbare geestelijke gezondheidszorg, maatschappelijke opvang, vrouwenopvang en verslavingsbeleid, de stimuleringsuitkeringen, de eigen bijdrage en de financiële tegemoetkomingen op het terrein van maatschappelijke ondersteuning en wijziging van andere besluiten (Besluit maatschappelijke ondersteuning)

5. ISSUES UNDER THE REVISED EUROPEAN SOCIAL CHARTER

As described above, FEANTSA has identified three issues that are not compatible with the relevant provisions of the Revised Charter:

- (1) Access to (emergency) shelter is made conditional to a local connection criterion or other criteria, impacting on the rights of homeless persons and (un)lawfully residing migrant(s) (workers);
- (2) The availability and quality of (emergency) shelters is inadequate, negatively impacting women, children, and young persons (i.e. vulnerable persons);
- (3) Due to a lack of coordination between the 43 responsible municipalities, there is a hindrance to the progression in the housing situation of the homeless.

These issues will be substantiated below in descending order.

5.1 Issues related to access

5.1.1 Conditionality of access to (emergency) shelter – Local Connection

Out of the 43 municipalities that are responsible for providing (emergency) shelter, a substantial number³ have introduced a requirement of a (local) connection to the region ('regiobinding') before a person is deemed entitled to emergency shelter. Local connection can be proven if a person can provide documentation that shows evidence of residency within the region over a period of two out of three years.⁴ In practice this proves problematic for a variety of groups:

- (a) Homeless persons, due to the lack of registration in the municipal registry (Gemeentelijke Basisadministratie or GBA), although alternative proof is accepted (i.e. criminal records, bank statements, etcetera) the GBA is the starting point;
- (b) Former addicts who wish to escape their 'enablers' (i.e. drug dealers and addicted friends), they may have local connection, but want to live in a different region (this goes towards choice of residence as well);
- (c) Migrants from all categories, due to the fact that they have not established a local connection over the specified amount of time; and
- (d) Roma and other marginalized groups for lack of documentation and, often, lack of proof of identity.

Over the years following the introduction of the Social Support Act attempts have been made between the 43 responsible municipalities to agree to a Code of Conduct concerning the local connection criterion. The intention was to make this Code of Conduct an integral part of the relevant local legislation. The Code of Conduct intended to solve the issue that persons in need of shelter were refused access on the basis of the local connection criterion. Unfortunately this Code of Conduct never materialized. Instead the Vereniging Nederlandse Gemeenten (Association of Netherlands Municipalities) has created a "Toolkit Nationwide Access"⁵ that can be implemented by the municipalities on a voluntarily basis. Given its voluntary nature there are still considerable gaps in the (nationwide) access to (emergency) shelter.

³ The total number of municipalities that have introduced a local connection criteria is hard to extrapolate as there are 43 different municipalities, and not all policy documents contain this information.

⁴ Policy document Amsterdam

⁵ Handreiking landelijke toegang maatschappelijke opvang

FEANTSA is of the opinion that access to (emergency) shelter should be conditional only on the criterion of need. The question of which municipality is responsible for providing the actual shelter should not be placed with the person in need.

5.1.2 Conditionality of access to (emergency) shelter – Other Criteria

Besides the local connection criterion the municipalities also apply other criteria in order to determine whether a person should be granted (emergency) shelter. The policy of the municipality of Amsterdam is a good example of this. In Amsterdam a person is eligible for (emergency) shelter only if the following six criteria are met:

- (1) Dutch citizenship or lawful residency under the Aliens Act 2000;
- (2) Factual or residential homelessness;
- (3) Aged 23 years or over;⁶
- (4) Local connection to the region;
- (5) Belonging to OGGZ target group (having serious mental health issues, including addiction, combined with problems in other areas);
- (6) Not having alternatives to find a solution to the factual and/or residential homelessness (Self Help Matrix).

In practice especially criteria 5 and 6 prove problematic as they may exclude persons in need of (emergency) shelter. If a homeless person has no (serious) mental health issues and/or is capable of finding, usually temporary, solutions to homelessness, he or she is excluded from (emergency) shelter.

5.1.3 EU and other lawful migrant workers

Although EU citizens are not excluded from (emergency) shelter according to the law up until now, in practice access to shelter is refused. The Netherlands government argues that if the EU citizen is residing lawfully as a “worker” this means he/she is responsible for his/her own housing. This due to the fact that freedom of movement within the EU is allowed only if the EU citizens concerned can support themselves. The result is that if the EU citizen loses his or her job, The Netherlands government argues that he/she has to return to their country of origin where he/she would have an entitlement to (emergency) shelter.

The Netherlands government has drafted new legislation to change the Social Support Act to exclude EU citizens who are unemployed or residing in the Netherlands for less than three months from access to (emergency) shelter⁷. This change will be debated in the Dutch parliament in 2013 and, once accepted by Parliament, will be enforceable retroactively dating back to April 19, 2010.

⁶ For persons between 18 and 23 years old similar criteria apply.

⁷ - 32 439 (Wijziging Wmo; regelen van eigen bijdragen voor maatschappelijke opvang en vrouwenopvang door gemeenten bij verordening en uitsluiten van de toegang tot maatschappelijke ondersteuning voor vreemdelingen die rechtmatig in Nederland verblijf houden)

Similar limitations apply to lawfully residing migrant workers from other parts of the world. With the expansion of the EU in 2007, The Netherlands furthermore made a reservation to the free movement of workers from the acceding countries (Bulgaria and Romania).

The exclusion of EU and other lawfully residing migrant workers from (emergency) shelter leads to problems in case of job loss and the (resulting) loss of housing. Persons in need become homeless and destitute. Besides that migrant workers are also more likely to fall victim to crooked landlords.

EU citizens and other lawfully residing migrants are not excluded from the enjoyment of rent benefit ('huurtoeslag') and other social benefits such as child allowance ('kinderbijslag') and care allowance ('zorgtoeslag').

5.1.4 Exclusion of irregular migrants

The Netherlands government has by law prohibited any government or government agency to provide irregular migrants with grants ('verstrekkingen'), provisions ('voorzieningen') and social benefits ('uitkeringen')⁸. The Aliens Act⁹ makes an exception for emergency medical care, schooling of children and legal assistance costs.

The aforementioned prohibition was introduced in The Netherlands legal system with the 1998 Benefit Entitlement Act¹⁰ ('Koppelingswet') with the main purpose of exclude irregular migrants from all public services. The idea behind this is that by excluding irregular migrants from access to public services, it is no longer possible for them to extend their (irregular) stay in The Netherlands. Justification for this exclusion is that the irregular migrant is primarily responsible for the situation he or she is in. In other words, the migrant is held accountable for his or her own predicament.

Implementation of the Benefits Entitlement Act was executed thoroughly. Although the government called for leniency when applying the Benefit Entitlement Act¹¹, the law was instead interpreted rigidly by government agencies and the Courts. After the introduction of the law, irregular migrants present in The Netherlands were excluded from all public services and lost their entitlement to shelter, food and (easy) access to medical care¹². Relevant laws were amended to achieve this exclusion from public services.

The State has made no provision to ensure that the situation of people who are homeless and destitute do not fall below that minimum standard of existence which denies their human dignity as set out in international law.

⁸ Article 10 of the Alien Act 2000 ('Vreemdelingenwet 2000')

⁹ Act of 23 November 2000, Stb. 2000, 495.

¹⁰ Act of 26 March 1998, Stb. 1998, 203.

¹¹ In the explanatory memorandum to the Benefits Entitlement Act The Netherlands government recognizes the fact that some aliens not lawfully present are in The Netherlands with the government's knowledge and consent. Therefore the memorandum states that aliens not lawfully present should not rigidly be deprived of all government services. Kamerstukken II, 1994-1995, 24 233, nr. 3, §2.1.

¹² Access to medical care is limited to emergency medical procedures only. Preventative medicine is excluded.

5.2 Availability and quality issues

The number of available shelters, as well as the quality of the shelters is not adequate for the existing need. There is a shortage of shelters that are adequate for women, children, and adolescents.

The Netherlands government has been monitoring the situation of homeless persons, and the policies concerned over the last eleven years. The 2010 survey¹³ shows that the situation has remained roughly the same over the years 2007-2009. Although some shifts have been made in the type of shelter / housing arrangement that is available, the overall picture did not change. It is also relevant to look at what the survey does not show, namely the actual need for shelter. This lack of data makes it impossible to conclude whether the availability of (emergency) shelter is adequate for the need that exists. The survey for instance does not show how many persons are refused access to the shelter.

Quality assurance procedures focus on processes rather than on the quality of the shelter itself. This leads to substandard shelters, especially where it concerns the most vulnerable groups:

- (1) Women with children are very hard to place due to the lack of suitable shelters (size, privacy, non-violence);
- (2) Adolescents, due to their state of physical and psychological development, also should be sheltered in a suitable and safe environment. The regular shelters cannot provide this, and after the age of 18 the adolescents are no longer entitled to youth care services¹⁴.

The main focus in The Netherlands is on the primary target group: white, male, substance abuser / trouble maker. This has consequences for the kind of (emergency) shelter that is available. These shelters offer little to no privacy, and many are not well maintained and dirty. This does not provide a healthy environment for children and other vulnerable persons. There are shelters that are specifically aimed at women (with children). The number of shelters however is not sufficient.

5.3 Progression of the housing situation of homeless people

The Netherlands legislation provides for some progression in the housing situation of the homeless. In theory it is possible to reach a stage of independent housing, starting from a first admission to an emergency shelter. In practice this is a difficult stage to reach due to the lack of intermediary shelters and affordable housing. This results in a prolonged stay in emergency shelter, and a prolonged risk of a relapse into homelessness. This risk is most pressing for (otherwise healthy) homeless men as they do not fall within the priority groups for which (social) housing is reserved (women with children, families, people with disabilities, and the elderly). In this framework it's important to take into account the ECSR Conclusions against Italy, that confirm "the temporary supply of shelter, even adequate, cannot be held as satisfactory and the

¹³ M. Tuynman, M. Planije, Monitor Maatschappelijke Opvang Jaarbericht 2010, Vraag- en aanbodgegevens van de maatschappelijke opvang en vrouwenopvang in 2009 (Trimbos Instituut, 2011)

¹⁴ Annual report 2010 by the Federatie Opvang (national federation of shelters) shows that 1595 people, aged 12-17, and 7196 people, aged 18-22, asked support at a shelter for the homeless.

individuals living in such conditions who wish so, should be provided with adequate housing within a reasonable period”¹⁵

Due to the fact that also this prioritization process is executed by the municipalities (in cooperation with the housing corporations), there are great differences the availability (housing shortage) and quality of the housing offered.

Furthermore, according to a study by PICUM, “the waiting lists for social houses are long and one can wait several years to obtain one (four to five years in Amsterdam; two years in Eindhoven)”.¹⁶

5.4 Effective remedy

Municipalities have a varying degree of development in their local legislation regarding (emergency) shelter. Some cities for instance ‘forgot’ to create within the legislation the ability to take a (formal) decision on the access to shelter in individual cases, leaving the person requesting the shelter without the possibility of appeal.¹⁷ This problem is most common in cities that have ‘outsourced’ the shelter of homeless people, but it happens in other municipalities as well. The Central Council of Appeal has judged the practice to be in violation of Dutch administrative law. This means that if a person is refused (emergency) shelter, this means the person has a right to appeal. Unfortunately not all persons are aware of this right, and often the right to appeal is not mentioned in the decision, if it is written at all.

One of the main problems arising from the combination of the local connection criterion, taken together with the formal inability to appeal is that no assessment is made on the actual need for (emergency) shelter.

FEANTSA is of the opinion that not assessing the need for (emergency) shelter is incompatible with the relevant obligations of the Revised Charter.

¹⁵ ” Conclusions of the ECSR, Italy, p. 105 (http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Italy2003_en.pdf)

¹⁶ Report on the housing situation of undocumented migrants in six European countries. http://picum.org/picum.org/uploads/file_/PICUM_Report_on_Housing_and_Undocumented_Migrants_March_2004.pdf

¹⁷ In order to have the right to appeal, The Netherlands law requires that the government has come to a formal (written) decision, without this formal decision an appeal will be rendered inadmissible.

6. NON-COMPATIBILITY WITH THE REVISED EUROPEAN SOCIAL CHARTER

6.1 Article 13 Revised European Social Charter

The issues raised in this complaint primarily show that The Netherlands' laws and policies concerning sheltering the homeless is not compatible with the obligations that arise out of Article 13 of the Revised Charter. Where Article 31 ESC deals generally with the right to housing, Article 13 deals with the specific function of providing assistance and (emergency) accommodations to those in need.

6.1.1 Limitations of access

The Netherlands policy and planned legal change sets limitations on the access of (emergency) shelter. The European Committee on Social Rights has deemed such limitations incompatible with Article 13 of the Revised Charter. According to the Committee assistance should be granted as soon as the need arises, i.e. the person in question is unable to obtain "adequate resources".¹⁸ States are required to provide for those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing).¹⁹

It is questionable whether the definition of need as used by The Netherlands government is compatible with the Revised Charter. The condition of "serious mental or psychological problems" does appear to limit access too much. In relation to The Netherlands the Committee has concluded that [w]hile individuals' need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this should not be interpreted too narrowly.²⁰

The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority, the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs.²¹ In The Netherlands the law does not lay down clear criteria for who is and is not eligible for (emergency) shelter. The criteria can be set by the local municipalities who are responsible for the execution of the law. As there are many differences between the municipalities, and municipalities also outsource the execution of the (local) laws (or agreements), this leads to differences between municipalities that cannot be explained on objective grounds. In this sense, it's important to take into account the Recommendation of the Committee of Ministers of Council of Europe to member states on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship where specified the right to the satisfaction of basic human material needs should contain as a minimum the right to food, clothing, shelter and basic medical care and the exercise of this right

¹⁸ European Committee of Social Rights, Conclusions XIII-4, pp. 54-57 and Conclusions XIV-1 Portugal, pp. 701-702.

¹⁹ Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

²⁰ Conclusions XIV-1, Netherlands, p. 598.

²¹ Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

should be open to all citizens and foreigners, whatever the latter's position under national rules on the status of foreigners, and in the manner determined by national authorities.²²

6.1.2 Residency

In the view of the Committee the (residence) status of the person should not be leading in that assessment. The personal scope of Article 13 Revised Charter is a broad one. Because need is the only criterion for granting social assistance, any person can be eligible for receiving social assistance benefits.²³ Based on Article 13§4 Revised Charter even people not lawfully present in the territory of a member state can be eligible for social assistance.²⁴ In these cases need still is the main criterion for eligibility, which means that emergency social assistance (food and accommodation) should be provided until the illegal alien can be repatriated.²⁵ The Committee has noted that persons not lawfully present do not necessarily need to be granted access to the regular social assistance scheme, but they are required to be provided temporary assistance, of an appropriate nature, where such persons are faced with an immediate state of need.²⁶ The Committee has concluded as late as 2010 that The Netherlands was not in conformity as they could not show whether unlawfully present persons received (emergency) social assistance (including emergency shelter).²⁷

The Parliamentary Assembly of the Council of Europe has stated that the right to housing is one of the minimum rights that should apply to everyone: "Adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants".²⁸

In accordance with the Appendix to the Charter, foreigners who are nationals of Contracting Parties and are lawfully resident or working regularly in the territory of another Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals.²⁹ In The Netherlands this does not appear to be the case. Equality of treatment also implies that additional conditions such as length of residence,³⁰ or conditions which are harder for foreigners to meet, may not be imposed on them. As length of residence is required in The Netherlands the policy is not compatible with the Revised Charter.

6.2 Connection with Article 19 Revised European Social Charter

It is obvious that besides raising issues under Article 13, this point of the complaint also raises issues concerning Article 19 of the Revised Charter that relates specifically to the rights of migrant workers. The article specifically mentions that migrant workers deserve a treatment no less favourable than nationals of the country concerned. Especially when it comes to questions

²² 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

²³ European Committee of Social Rights, Conclusions X-2 Spain p. 121 and Conclusions XIII-4, pp. 54-57.

²⁴ European Committee of Social Rights, General Introduction to Conclusions XVIII-1 Belgium and International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32.

²⁵ European Committee of Social Rights, Conclusions XIII-4, pp. 54-57 and Conclusions XVIII-1 Germany, p. 22.

²⁶ European Committee of Social Rights, Conclusions XIV-1, Netherlands, p. 598.

²⁷ European Committee of Social Rights, Conclusions 2009 (NETHERLANDS), p. 32.

²⁸ Mr Ed van Thijn, Human rights of irregular migrants, COE Parliamentary Assembly Doc 10924, 4 May 2006.

²⁹ Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

³⁰ Conclusions XVIII-1, Denmark, pp.144-145.

of local connection (hard to reach), as well as loss of entitlement due to loss of a job, the policy is not compatible with Article 19 of the Revised Charter.

6.2.1 Availability and quality

The Netherlands does research into the use that is made of the (emergency) shelters. The numbers show no major shifts in those numbers over the last couple of years (2007-2009). What the numbers do not show is what is the actual need. The only way to secure enough (emergency) shelter for those in need is to have insight in these numbers. Without them it is hard to come to a conclusion of compatibility with the Revised Charter. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. There must be enough places.³¹

Housing in light of Article 13 Revised Charter should be seen as an adequate resource needed to lead a decent life and meet basic needs in an adequate manner. This raises questions as to the quality of the (emergency) shelters in The Netherlands. The common (emergency) shelter is catered for the main target group (men, middle aged, substance abuser, mental / psychological problems). This means the shelters offer little when it comes to leading a decent life. The basic needs may be met if a bed and a roof over one's head is considered enough to meet those needs. The conditions in the shelters should be such as to enable living in keeping with human dignity.³²

As the United Nations Committee on Economic, Social and Cultural Rights puts it: "The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity."³³

It should be noted that because social assistance is based on need it cannot be limited in time.³⁴ Therefore social assistance should be given as long as the need persists in order to help the person concerned to continue to lead a decent life.³⁵

6.2.2 Appeal

Although the Central Council of Appeal has determined that all decisions are by law appealable, this does not guarantee in practice that all persons concerned know of this option, especially when this option is not clearly defined on paper. Moreover, in many cases homeless persons may be made aware of an appeal possibility without knowing how to execute their right. This means that a right that is guaranteed in theory is not necessarily effective in practice. All unfavourable decisions concerning the granting and maintenance of assistance must be subject

³¹ European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107.

³² European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109.

³³ CESCR, General Comment no 4, on the right to adequate housing, E/1992/23.

³⁴ European Committee of Social Rights, Conclusions XIV-1 United Kingdom, p. 845.

³⁵ European Committee of Social Rights, Conclusions XIII-4, pp. 54-57 and Conclusions XVIII-1 Spain, p. 745.

to appeal, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an offer of employment or training.³⁶

The Charter is the only treaty which guarantees the right to social and medical assistance. It breaks with the traditional concept of assistance, which is confused with the moral duty of charity: “the Contracting Parties are not merely empowered to grant assistance as they think fit; they are under an obligation which they may be called on in court to honour”.³⁷

In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.³⁸ This last guarantee usually is not a problem in The Netherlands as the system of State funded legal aid is quite accessible, however accessing this legal aid proves difficult for homeless persons.

6.3 Article 31 Revised European Social Charter

The issues raised in this collective complaint show that The Netherlands laws and policies are not compatible with Article 31 paragraphs 1 and 2 of the Revised Charter. It has been shown that access is limited or made conditional, and that the shelters are of poor quality especially given the nature of vulnerable target groups (children, women). What is more, The Netherlands policy is not successful in the prevention and elimination of homelessness.

Article 31 ESC emphasizes the importance of adequate housing and the prevention of homelessness. Housing is considered adequate when it is a structurally secure dwelling, safe from a sanitary and health point of view and not overcrowded. This means that there has to be access to basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity etcetera. Also it has to be suitable in light of the number of persons and the composition of the household in residence.³⁹

The prevention of homelessness is specifically aimed at categories of vulnerable people.⁴⁰ The policy by which people get excluded from shelter based on their regional connection is clearly not in accordance with Article 31 ESC.

As described in the complaint The Netherlands policy does not guarantee a transition towards non-temporary housing. It is possible that homeless persons remain housed in (emergency) shelter situation due to a lack of appropriate (affordable, “accompanied living”, etcetera) housing. The temporary supply of shelter, however adequate, cannot be considered satisfactory; Individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.⁴¹

³⁶ Conclusions XVIII-I, Hungary, p. 406.

³⁷ Conclusions I, Statement of Interpretation on Article 13§1, pp. 65-67.

³⁸ Conclusions XVI-1, Ireland, p. 366.

³⁹ European Committee of Social Rights, Conclusions 2003, France, p. 221.

⁴⁰ European Committee of Social Rights, Conclusions 2003, Italy, p. 342.

⁴¹ Conclusions 2003, Italy, p. 345.

6.4 Article 16 and 17 Revised European Social Charter

Although there is separate (emergency) shelter for women and children, the demand outnumbers the need. This means that women and children either have to accept shelter that is not adequate for their situation (no privacy, bad sanitation, etcetera), or that they have to find shelter for themselves. Especially when the women come from abusive relationships this is not an acceptable situation. In light of Council of Europe's Parliamentary Assembly Resolution 1512 (2006), entitled, Parliaments united in combating domestic violence against women, which calls on States "to encourage the public authorities to take the necessary action to combat domestic violence effectively and publicly, in particular by providing refuges for the victims of domestic violence and their children."⁴²

It raises issues under article 16 and 17 of the Revised Charter. Families and children require a different approach. Article 16 guarantees a right to decent housing only from the family prospective. This provision focuses on the right of families to an adequate supply of housing, on the obligation to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and includes essential services.⁴³

6.5 Article E Revised European Social Charter

Given the issues described in this collective complaints concerning local connection, EU citizens, irregular migrants, and other excluded groups. This complaint should be read in light of the prohibition of discrimination as stipulated in Article E of the Revised European Social Charter.

7. CONCLUSION

FEANTSA has identified three issues that are not compatible with the relevant provisions of the Revised Charter:

- (1) Access to (emergency) shelter is made conditional to a local connection criterion or other criteria, impacting on the rights of homeless persons and (un)lawfully residing migrant(s) (workers). This raises issues under Articles 13, 31, and 19, read alone or in conjunction with Article E of the Revised European Social Charter;
- (2) The availability and quality of (emergency) shelters is inadequate, negatively impacting women, children, and young persons (i.e. vulnerable persons). This raises issues under Articles 31, 16 and 17 of the Revised European Social Charter;
- (3) Due to a lack of coordination between the 43 responsible municipalities, there is a hindrance to the progression in the housing situation of the homeless. This raises issues under Articles 13, 31 and 30 of the Revised European Social Charter.

Besides the fact that these issues are not compatible with the relevant provisions of the Revised European Social Charter, The Netherlands laws and policies concerning (emergency) shelter have a negative impact on other human rights. Limiting access to (emergency) shelter has an impact on the Right to Private and Family Life as protected by Article 8 of the European

⁴² Council of Europe Parliamentary Assembly Resolution 1512:
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/Eres1512.htm>

⁴³ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31§2005, Decision on admissibility of 10 October 2005, §9.

Convention on Human Rights. It impacts the Right to the Highest Attainable Standard of Health as protected by Article 11 of the International Covenant on Economic Social and Cultural Rights. The Netherlands has signed and ratified both these conventions, which implies that The Netherlands is consistent in its affirmations of its international obligations in the sphere of social and economic rights.

On behalf of FEANTSA

A handwritten signature in black ink, appearing to be 'Rina Beers', written over a horizontal line.

Rina Beers
President