



European  
Social  
Charter

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COUNCIL OF EUROPE  
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

19 October 2012

**Case No. 2**

**European Federation of National Organisations working with the Homeless  
(FEANTSA) v The Netherlands**  
Complaint No 86/2012

**SUBMISSIONS OF THE GOVERNMENT  
ON THE ADMISSIBILITY AND MERITS**

**Registered at the Secretariat on 16 October 2012**

**Observations of the Government of the Netherlands  
on the admissibility and merits  
of complaint No. 86/2012**

**THE EUROPEAN FEDERATION OF  
NATIONAL ORGANISATIONS  
WORKING WITH THE HOMELESS**

**v.**

**The Netherlands**

## **Introduction**

1. On 4 July 2012, the European Federation of National Organisations Working with the Homeless (FEANTSA) lodged a complaint with the European Committee of Social Rights ('the Committee') on the basis of the 1995 Additional Protocol to the European Social Charter ('the Additional Protocol'), alleging a violation of the Revised Social Charter ('the Revised Charter') by the Government of the Netherlands ('the Government').
2. By letter of 9 July 2012, the Executive Secretary of the Committee forwarded the complaint to the Government, expressing the Committee's wish to receive the Government's observations on the admissibility and the merits of the complaint.
3. The complaint concerns the incompatibility of Dutch legislation, policy and practice regarding sheltering the homeless with the rights enshrined in the following articles of the Revised Charter:
  - 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 in conjunction with:
  - article E: non-discrimination.
4. In its complaint, FEANTSA identified three issues that it believes are incompatible with the relevant articles of the Revised Charter. First, FEANTSA holds that access to (emergency) shelter is made conditional on a local connection ("*regio-binding*") criterion or other criteria, impacting on the rights of homeless persons and (un)lawfully residing migrants and migrant workers. Second, FEANTSA considers the availability and quality of (emergency) shelters inadequate, which negatively impacts women, children and young persons. And third, according to FEANTSA, there is a hindrance to the progression in the housing situation of the homeless, due to a lack of coordination between the forty-three responsible municipalities.

## **Admissibility of the complaint**

5. In so far as the complaint relates to persons residing illegally in the Netherlands, the Government would make the following observations relating to admissibility.

6. Paragraph 1 of the Appendix to the Revised Charter explicitly restricts the scope of the articles of the Revised Charter on which FEANTSA's complaint relies, with the exception of article 19, to foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. This provision is unambiguous and can only lead to the conclusion that persons not residing lawfully in the Netherlands do not, on the grounds of Paragraph 1 of the Appendix, fall under the scope of the Revised Charter, the only relevant exception in this context being article 19.
7. With regard to paragraphs 4 and 7 of article 19 of the Revised Charter on which FEANTSA relies in its complaint,<sup>1</sup> their scope is also explicitly restricted to migrant workers and their families residing lawfully within the territory of the Party in question. These provisions are equally unambiguous and can only lead to the conclusion that persons not residing lawfully in the Netherlands do not fall under the scope of the aforementioned paragraphs of article 19 on which FEANTSA relies. In this connection, the Government would refer to paragraphs 111 and 112 of the Committee's decision on the merits in the case of the *European Roma Rights Centre (ERRC) v. France*.<sup>2</sup>
8. With regard to the admissibility of the complaint, the Government concludes that it is inadmissible in so far as it concerns persons not residing lawfully in the Netherlands, having regard to Paragraph 1 of the Appendix to the Revised Charter and the paragraphs in article 19 cited by FEANTSA, which explicitly exclude the protection of these persons from the scope of the Revised Charter.

### **Merits of the complaint**

9. The Government will first give a general explanation of the national support system for the homeless before addressing the separate elements of the complaint.

#### ***National system for homeless assistance***

10. Assistance for homeless persons is regulated in the Social Support Act (WMO). Under section 1, subsection 1 (c) of the WMO, community shelter services are defined as 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. Community shelter services are intended for people who are genuinely unable

<sup>1</sup> See pages 4 and 9 of the complaint.

<sup>2</sup> Complaint No. 51/2008.

to hold their own. Pursuant to section 20, subsection 6 of the WMO, community shelter services funded by the municipalities are accessible to all those who live in the Netherlands (also referred to as the nationwide access principle). The Act delegates responsibility for social support to the municipalities, as they are best placed to organise innovative forms of social support and develop individualised solutions. On the other hand, the nationwide access principle constitutes a firm guarantee of access to community shelter services for those in need.

11. The Social Support Decree<sup>3</sup> lays down further rules with regard to the implementation of the WMO. Forty-three municipalities (*centrumgemeenten*), which have been designated as regional authorities for shelters, receive funding to implement activities related to the provision of community shelter services, as part of a broader central-government grant provided by the Minister of Health, Welfare and Sport ('the Minister') to help municipalities perform the tasks delegated to them under the WMO. Central government's total contribution to municipalities for community shelter services, drug addiction policy and public-funded mental health care (OGGZ) amounts to some €300 million per year. Each of these municipalities is responsible for community shelter services in a wide region. Under section 20, subsection 5 of the WMO, it must consult other municipalities in the region on how the grant is to be spent.
  
12. In 2006, central government and the four major cities (Amsterdam, The Hague, Rotterdam and Utrecht, 'the G4') agreed on an Action plan on shelters in the community ('Action Plan'),<sup>4</sup> aimed at providing shelter and individualised support to homeless people known to the authorities. According to the Action Plan Monitoring Report for 2010,<sup>5</sup> this goal has been achieved. In 2010 nearly 2,300 newly registered homeless people entered an individualised support programme. By July 2011 the total number of persons reached by the Action Plan was nearly 12,500. On 13 July 2011, the G4 and the Government established the second phase of the Action Plan,<sup>6</sup> aiming to maintain the results achieved during the first phase and acting on the principle that prevention is preferable to intervention. In other words, the goal is to prevent people from declining or relapsing into homelessness and to facilitate their participation (or continued participation) in society as much as possible. The G4 aim to prevent homelessness by investing in activities aimed at preventing social destitution and relapse. People who are currently in shelters or support programmes will be helped to move forward and participate in society. Those still homeless will be enrolled in community shelter

<sup>3</sup> Decree of 2 October 2006, Bulletin of Acts and Decrees 2006/450.

<sup>4</sup> Plan van Aanpak maatschappelijke opvang, 7 February 2006. (Dutch only.)

<sup>5</sup> Monitor Plan van Aanpak maatschappelijke opvang; rapportage 2010: Amsterdam, Den Haag, Rotterdam en Utrecht. Trimbos Institute, Utrecht, 2011. (Dutch only.)

<sup>6</sup> Plan van aanpak dak- en thuislozen (maatschappelijke opvang) 2<sup>e</sup> fase, 4 April 2011. (Dutch only.)

services. Modified versions of this Action Plan, the Urban Compasses, serve the other 39 regional authorities for shelters. Progress is reported in the Urban Compass Monitor.<sup>7</sup>

13. Community shelter services exist in a myriad of forms, since there is no prescribed structure. The most common are day and night shelters and 24-hour accommodation. Efforts are, however, always aimed at helping people at the earliest stage possible (prevention) and enabling people to live as 'normally' as possible after a period of homelessness. Peripatetic counselling programmes, sheltered accommodation and supported housing also fall under community shelter services.<sup>8</sup> Finally, specific facilities (such as boarding houses) may be created for homeless young people.<sup>9</sup>
14. It is important to note that municipalities are free to take supplementary measures to prevent and combat homelessness, in addition to their statutory tasks under the WMO. The municipality of Rotterdam, for instance, has important social facilities to help people before they reach the stage of needing community shelter services. Social workers at the Social Services Centre are easily accessible for all residents who have trouble dealing with unemployment, housing or other problems on their own. The municipality also established an Eviction Prevention Desk that can be called in by a housing association to help tenants at risk of eviction due to rent arrears deal with their debt problems. Local Care Networks are networks in which professional care organisations, housing associations and the police work together to arrange support and care for people with complex problems (physical, mental, financial and housing-related problems) who cannot be reached adequately through regular care channels. Finally, Rotterdam also deploys Social Teams which counsel multi-problem families where there are suspicions of serious problems in child-raising, household management and administration, or where these families have dropped out of their individualised social support programme because of these problems. Social Teams work closely with the Local Care Networks and the Eviction Prevention Desk.
15. The facilities in Rotterdam are an example of how community shelter services, as provided for in the WMO, are part of a much larger package of measures at both local and regional level aimed at preventing and combating homelessness.

<sup>7</sup> Monitor Stedelijk Kompas 2010; Plan van aanpak maatschappelijke opvang in 39 centrumgemeenten. TrimboS- Institute, Utrecht, 2011. (Dutch only.)

<sup>8</sup> Places in sheltered accommodation and supported housing are often financed under the Exceptional Medical Expenses Act (*Algemene Wet Bijzondere Ziektekosten*).

<sup>9</sup> The Dutch federation of community shelters (*Federatie Opvang*), runs a website for Institutions and Individuals that gives an overview of most of the services available. See <http://www.opvangatlas.nl/zoek>.

### *Access to (emergency) shelter*

16. The first part of FEANTSA's complaint is that Dutch policy and the proposed amendments to legislation place restrictions on access to emergency shelter which are incompatible with articles 13, 19 and 31 of the Revised Charter, read alone or in conjunction with Article E. FEANTSA claims access is limited or conditional.

### *Local connection*

17. First, FEANTSA argues that a substantial number of the regional authorities for shelters apply the local connection criterion when deciding on admission, which may cause problems for certain categories of homeless persons.
18. As of 2010, regional authorities for shelters receive a central-government grant for community shelter services based on objective criteria such as regional population and size of socially vulnerable groups. These municipalities also devote a large part of their own budget to combating problems related to homelessness. In view of this expenditure and the considerable influx of homeless persons experienced by some municipalities, a number of regional authorities for shelters felt the need to make access to community shelter services conditional on a local connection. The advantage of helping people in their own region is that their own social safety net is still available to them. In addition, if emergency shelter is not readily available elsewhere, a relapse is less likely to result in a client dropping out of an individualised programme aimed at building a more regulated and socially integrated way of life. The client is thus less likely to remain indefinitely at the stage of receiving emergency shelter.
19. In order to guarantee nationwide access to community shelter services, the Association of Netherlands Municipalities (VNG) drew up guidelines that were endorsed at a meeting on 3 February 2010 by the members of the executive responsible for community shelter services in the 43 municipalities concerned. The guidelines generally prescribe that anyone in the target group can apply to any municipality for community shelter services. The application is processed by the regional authority to which an individual first applies which then provides initial emergency shelter ('bed, bath and bread') if necessary and, in consultation with the individual concerned, decides where an individualised support programme would have the best chance of success. Shelter services are then provided by that regional authority for shelters. Contrary to FEANTSA's assertion, therefore, it is the regional authority to which a homeless individual first applies that is responsible for deciding which regional authority receives the individual concerned. This depends on where the support programme is most likely to lead to a successful outcome. Aspects to be considered here include the individual's local connection

or social network, whether or not they are known to the police, and whether there are reasons for severing existing social ties. The person concerned may also have certain preferences or reasons for wanting shelter in a certain region or municipality. In order to facilitate contact between municipalities and streamline the transfer of homeless persons, VNG has drawn up a list of contact persons to be used if a client would have a better chance of social recovery elsewhere.

20. The State Secretary for Health, Welfare and Sport ('the State Secretary') considers the principle of nationwide access an important instrument to ensure that persons in need will receive proper assistance and that her or she will not be denied access due to the lack of local connection. In this context she regularly requests information from organisations supporting homeless persons, such as COMO G4 (umbrella organisation for providers of homeless assistance in the four major cities) and outreach workers for the homeless. Federatie Opvang has also been asked to monitor the situation and pass on signals of any undesirable developments. As at 1 September 2012, however, fewer than ten cases have been reported. The State Secretary has underscored the importance of nationwide access in communications with the VNG and by letter to the members of the municipal executives concerned. Any reports from homeless support organisations, Federatie Opvang or other stakeholders of cases where the nationwide access condition was disregarded are passed on by the Ministry of Health, Welfare and Sport ('the Ministry') to the VNG. The Ministry also informs officials of the municipality in question and may take the issue to the responsible member of the executive if the response is not satisfactory. Where local policy on access to shelters is tightened up, the Ministry will contact the municipality concerned to ensure that any changes to policy do not lead to clients falling through the gaps in the system. Until now, this approach has sufficed. Further measures will be considered if municipalities do not comply with the nationwide access principle, the first step being inter-authority discussions.
21. It is evident from the above that there are good reasons for applying the local connection criterion, that increase the likelihood that homeless assistance will be successful. It is also evident that the nationwide access principle is supported explicitly at national and local level. Measures are in place to ensure compliance with this principle. It follows that, due to the way the local connection condition is interpreted and applied by the VNG and the responsible members of the executive in the municipalities concerned, the categories of people identified by FEANTSA are not in fact excluded from community shelter services.

*Other criteria*

22. Second, FEANTSA asserts that the regional authorities for shelters also apply other criteria that exclude people in need from emergency shelter and services, citing the policy of the



municipality of Amsterdam as an example. The municipality of Amsterdam applies as criteria for access to community shelter that the applicant must have multiple problems and the lack of a sufficient network to fall back on.

23. In the example of the municipality of Amsterdam the application of aforementioned criteria means that homelessness alone is not sufficient for access to community shelters. The criteria used by municipalities to decide on access to community shelter services are based on the definition in the WMO, which states that multiple problems and lack of self-sufficiency must be present. The target group for community shelter services is also determined by the merging of policy on public mental health care, community shelter services and care services for addicts, for instance in section 20, subsection 1 of the WMO. Finally, implementation of the WMO is delegated to the regional authorities for shelters, which have a considerable degree of policy freedom. In other words, within the statutory constraints, municipalities are free to decide who is eligible for community shelter services. Unless there are indications that access is becoming too restricted, it is municipal councils who oversee that the criteria for access to shelters as laid down by the regional authority are in compliance with the WMO. Otherwise, this role will be fulfilled by the Ministry. At this time, there have been no such indications.
24. It is important to note in this regard that other forms of assistance are available for persons in need who do not fall in the target group for community shelter services. The Netherlands has a comprehensive social services system, including the social safety net provided by the Work and Social Assistance Act and Title III (Debt Repayment Natural Persons) of the Bankruptcy Act. Municipalities use these and other instruments to prevent homelessness. Where, for instance, someone has become homeless after being evicted from their home but does not have problems in the domain of public mental health care, the municipality usually acts quickly to ensure the person concerned is rehoused. The government refers to 'Housing First' as a noteworthy concept. The Netherlands also has a comprehensive system of intramural and peripatetic mental health care for people whose difficulties are solely related to mental illness. In the light of the above, the presentation of multiple problems can be a criterion for access to community shelter services. There is, after all, a comprehensive system of care and social services available to people without multiple problems. It is therefore untrue that these people are left to their own devices.
25. Contrary to FEANTSA's assertion, people who do not fulfil the criteria for community shelter services are not left in the lurch in Amsterdam either. There are other, more broadly oriented social workers, to whom persons in need are directed if necessary. In addition, with regard to the criteria used in Amsterdam to determine eligibility for community shelter services, access cannot be refused on the grounds of the local connection criterion alone. A hardship clause also applies, so that the municipal executive may take a decision which departs from the

criteria if the person or persons concerned would otherwise suffer disproportionate hardship.<sup>10</sup> In crises or emergency situations, some form of shelter is always arranged immediately.

26. The criteria used by municipalities to determine eligibility for community shelter services are therefore based on the WMO and ensure that these services are reserved for people who are genuinely unable to hold their own.

*EU migrants and other workers lawfully residing in the Netherlands*

27. FEANTSA's third argument is that citizens of the European Union ('EU citizens') are refused access to community shelter services because the free movement of persons is conditional on EU citizens being able to support themselves. FEANTSA also points the Committee to a proposed amendment to the WMO ('the proposed amendment') that would make EU citizens who are unemployed or residing in the Netherlands for less than three months ineligible for emergency shelter.
28. With regard to the proposed amendment, the Government would observe that the Committee, within the scope of the collective complaints procedure, bases its assessment of conformity with the Charter on the domestic law and practice applicable on the date of the decision on the merits of the complaint. In this connection, the Government would refer to paragraph 53 of the Committee's decision on the merits in the case of *FEANTSA v. France*.<sup>11</sup> After the fall of the Dutch government in the spring of 2012, the proposed amendment was announced 'controversial' by the House of Representatives and cannot progress further under the current caretaker government. It will not therefore be debated in the House until after the general election in the autumn of 2012. Moreover, the House of Representatives sets its own timetable and the proposed amendment will also subsequently be debated in the Senate. At this time, therefore, it is uncertain if, or when, the proposed amendment (as it stands or in an altered form) will be adopted, and if it is, when it will enter into force.
29. The Government would also refer to the explanatory memorandum on the proposed amendment. Recent developments in the various municipalities have created a pressing need for some means of regulating access to community shelters for this category of aliens. In the major cities especially, community shelter services are used by increasing numbers of EU citizens – usually but not always from Central and Eastern European member states. Local authorities have noticed that these individuals increasingly regard the various forms of night shelter as low-budget accommodation. Community shelters are not intended for such purposes, and increased pressure on the shelters results in a shortage of places for the target

<sup>10</sup> Amsterdam municipal council decision 256/771 of 16 November 2010. (Dutch only.)

<sup>11</sup> Complaint No. 39/2006.

group. Many municipalities are 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. They have nevertheless urged the Government to apply the exception provided for in Directive 2004/38/EC, amend the WMO accordingly and align it with section 11 of the Work and Social Assistance Act. An exception provision in the WMO would make it easier for municipalities to refuse access to community shelter services to EU citizens who are seeking work or have been in the Netherlands for less than three months. This would prevent night shelters, for instance, from being populated by groups for which they are not intended. Such a measure would also indirectly prevent capacity shortages and the displacement of the target group.

#### *Illegal aliens*

30. FEANTSA argues, fourth, that illegal aliens in the Netherlands are excluded from all public provision and do not have access to shelter, food or medical facilities (except emergency medical care). FEANTSA claims the Government has made no provision to prevent persons who are homeless or destitute from falling below the 'minimum standard of existence'.
31. The Government would emphasise its position that the complaint is inadmissible in so far as it refers to persons not residing lawfully in the Netherlands. Furthermore, the Government would observe the following.
32. The Government is opposed in principle to granting benefit rights to aliens who are not lawfully resident and are obliged to leave the Netherlands. In order to prevent aliens who are not lawfully resident from receiving *de facto* assistance from the Government without the lawfulness of their residence being examined – thereby facilitating the prolongation of their unlawful residence in the Netherlands and creating a false impression of legality – an Act of Parliament entered into force on 1 July 1998, amending the Aliens Act and certain other acts and linking entitlement to various provisions, benefits, exemptions and licences to lawful residence in the Netherlands.<sup>12</sup> This piece of legislation, which incorporates the 'linkage principle', is known as the Benefit Entitlement (Residence Status) Act (*Koppelingswet*).
33. Exclusion from entitlement to specific benefits or facilities is laid down in the relevant Acts, such as the WMO. Exceptions to the linkage principle – certain benefits and facilities in the areas of education, legal aid and health care – are laid down in section 10 of the Aliens Act 2000 (*Vreemdelingenwet 2000*). Nowhere in the Benefit Entitlement (Residence Status) Act is it explicitly stated that an alien who is not lawfully resident should not receive health care. What is more, the principle that essential health care must be available to all is generally recognised in

<sup>12</sup> Bulletin of Acts and Decrees 1998, 203.



Netherlands enjoys a wide margin of appreciation.<sup>14</sup> An illegal alien can be offered shelter in a reception, such as a family facility or other restrictive accommodation.

37. In acute emergencies, an illegal alien can apply for assistance to the police or the municipality. The latter may decide to provide shelter, or refer the individual concerned to a private initiative, or contact the Repatriation and Departure Service (DTV) of the Immigration and Naturalisation Service to offer shelter in a family facility or other restrictive accommodation. Under an agreement between the municipalities and DTV, the latter will always check whether such shelter can be provided when contacted by a municipality.
38. Families with minor children residing unlawfully in the Netherlands who had been provided with shelter in the context of their asylum application can be accommodated in a family facility, a form of restrictive accommodation financed by central government. Families staying in these facilities must report regularly and must remain in the municipality where the facility is located. Families are given a weekly budget of €55 per family member for foodstuffs, clothing and other needs. The children attend local schools. Family facilities were introduced at the end of 2011 in accordance with a judgment<sup>15</sup> of The Hague Court of Appeal, which was upheld by a judgment<sup>16</sup> of the Supreme Court, concerning the ban on putting families whose asylum application has been rejected on the street. Currently, there are family facilities in Amersfoort, Den Helder, Emmen, Gilze-Rijen and Katwijk. The provision of shelter at these facilities only ends if the family leaves the Netherlands or when the youngest child in the family reaches the age of 18 years.
39. Finally, the Government would point to the cold weather scheme. During a prolonged cold snap, the regional authorities for shelters offer a meal and a bed at a municipal facility to all homeless persons, irrespective of their residence status, who are unable to make their own arrangements.
40. Contrary to what FEANTSA claims, it is apparent from the above that the Government has several measures in place to protect, in accordance with international law, the human dignity of aliens residing unlawfully in the Netherlands.
41. For the rest, the Government would note that article 13, paragraph 4 of the Revised Charter does not apply to the shelter of unlawfully residing aliens based on the WMO. According to paragraph 4, the provisions of article 13 are to be applied by the Parties in accordance with their obligations under the European Convention on Social and Medical Assistance (ECSMA). Annex I to the ECSMA contains a list of laws and regulations in force in the territories of the

<sup>14</sup> See, for instance, the judgment of 30 May 2011 in case nos. 11/2850 WMO-VV and 11/3201 WMO-VV; LJN: BQ6438 and the judgment of 2 May 2012 in case nos. 11/5339 WMO and 11/6236 WWB; LJN: BW5501.

<sup>15</sup> Judgment of 11 January 2011 in case no. 200.063.511/01; LJN: 809924.

<sup>16</sup> Judgment of 21 September 2012 in case no. 11/01153; LJN: BW 5328.

Contracting Parties to which the Convention applies. Neither the WMO, which provides the legal basis for community shelter services in the Netherlands, nor its predecessors are on that list. This means the ECSMA does not apply to the WMO. Accordingly, the Revised Charter need not be applied in accordance with the ECSMA in this context.

*Conclusions with regard to access to (emergency) shelter*

42. Unlike FEANTSA, the Government does not consider the criteria on access to community shelter services, laid down by law and by the regional authorities for shelters, incompatible with article 13 of the Revised Charter, whether in conjunction with article E or not. The only effect of the criteria laid down in the WMO and applied by municipalities is to restrict access to community shelter services to those persons in the target group. Unlike FEANTSA, the Government is of the opinion that the assessment of whether or not someone is in such a serious and acute situation that he/she requires emergency shelter (i.e. falls within the target group) is not overly strict. The Government also considers that the WMO contains a sufficiently clear description of the target group, and thus those eligible for emergency shelter. The regional authorities for shelters can lay down further criteria on access to community shelter services, but the Ministry oversees that these criteria do not restrict access to the extent of excluding members of the target group as defined in the WMO. This system of homeless assistance enables people who fall in the target group to access community shelter services and live with dignity.
43. In so far as FEANTSA refers to the local connection criterion in invoking article 19 of the Revised Charter, the Government would point to measures taken by the Ministry and VNG to prevent this criterion from negatively affecting nationwide access. In so far as it refers to the amendment to the WMO in the same context, by pointing out that people who lose their jobs thereby lose access to (emergency) shelter, the Government would refer to paragraph 28, above.
44. FEANTSA also argues that Dutch policy is incompatible with article 31, paragraph 2 of the Revised Charter because access to emergency shelter is limited to or made conditional on, in particular, a local connection. However, the only restriction on access to community shelter services, including emergency shelter, is that persons must fall within the target group. This is completely logical, legitimate and necessary. As regards the local connection criterion, the Government would refer to the measures taken by the Ministry and VNG to prevent the criterion from negatively affecting nationwide access. With regard to the argument put forward by FEANTSA that Dutch policy is not successful in preventing and eliminating homelessness, as referred to in article 31, paragraph 2, of the Revised Charter, the Government would observe that the Action Plan Monitoring Report 2010 showed all objectives had been amply met. The

most important of these were the drafting of intervention programmes with individualised goals in the areas of housing, care, income and daytime activities for all members of the homeless population (an estimated 10,150 in 2006, including those in temporary accommodation<sup>17</sup>) and providing a stable mix of housing, legal income and contact with a social worker for some 6,900 of them. By the end of 2010, 12,436 homeless people in the G4 had been enrolled in individualised programmes and a stable mix had been achieved for 7,476 people. On a smaller scale, similar results were achieved in the other 39 municipalities designated regional authorities for shelters. There, the Urban Compasses ensured better collaboration between all partners and a stronger focus on clients' needs. Due in part to the Urban Compass approach, a growing number of homeless persons are provided care under the Exceptional Medical Expenses Act, a trend confirmed in the Urban Compass Monitor,<sup>18</sup> published annually by Trimbos Institute. The general tendency, revealed by the monitoring reports for 2009 and 2010, is that there are fewer people living on the streets and more people living in emergency shelters and transitional accommodation. Overall, the number of evictions is also falling. The 2011 monitoring report, due in October 2012, shows that this trend has continued. The Government would also point to the growth in turnover of institutions providing community shelter services and women's shelters, which has increased by an average of 12% a year since 2006 and totalled more than €630 million in 2009.<sup>19</sup>

#### ***Availability and quality of (emergency) shelters***

45. FEANTSA argues that there is a lack of suitable shelters for women, children and adolescents. It considers the quality of regular shelters inadequate for these vulnerable groups because they offer insufficient protection. Although there are separate (emergency) shelters for women and children, FEANTSA claims that demand exceeds the number of places available, which are lacking in quality. This means women and children either have to accept shelter that does not meet their needs or find shelter for themselves. FEANTSA considers this situation incompatible with articles 16, 17 and 31 of the Revised Charter.
46. The Government would note that the quality of shelters, i.e. the provision of adequate shelter services based on professional standards, is the primary responsibility of the institutions that run them (and their sector association). Central government is responsible for the system, i.e. the enabling conditions, such as a legal framework and funding. The Government is of the opinion that FEANTSA's reliance on articles 16, 17 and 31 of the Revised Charter cannot succeed. The Government would also note that a separate policy is in place specifically for the

<sup>17</sup> The definition of homeless people includes registered residents of shelters in the community.

<sup>18</sup> Monitor Stedelijk Kompas 2009; Plan van aanpak maatschappelijke opvang in 39 centrumgemeenten. Trimbos-instituut, Utrecht, 2010. Monitor Stedelijk Kompas 2010; Plan van aanpak maatschappelijke opvang in 39 centrumgemeenten. Trimbos Institute, Utrecht, 2011. (Dutch only.)

<sup>19</sup> Data from Statistics Netherlands (CBS): <http://www.cbs.nl/nl-NL/menu/themas/gezondheid-welzijn/publicaties/artikelen/archief/2011/2011-uitgaven-aana-maatschappelijke-opvang-pub.htm>.

most vulnerable groups of homeless people – women, with or without children, and adolescents – and that the Netherlands has shelters tailored specifically to these groups.

*Women with children*

47. The special-purpose grants provided by the Minister to designated municipalities for the provision of women's shelter services amount to some €100 million, subject to the nationwide access condition based on section 20, subsection 6 of the WMO. The separate funding reflects the Government's commitment to sufficient, safe and nationally accessible shelter services for women.
48. The 35 regional authorities for women's shelters are responsible for emergency or temporary accommodation and support to women who have left their homes, voluntarily or otherwise, due to relationship problems or domestic violence. Municipalities are obliged to draft plans on women's shelter services, including measures to guarantee the quality of provision. Many municipalities monitor the implementation of these measures by means of periodic meetings on progress, on-site or elsewhere, as well as making agreements on performance targets with the organisations concerned.
49. The role of central government is to create the enabling conditions using legal, administrative and financial instruments. The system of women's shelter services should be designed to ensure that assistance is available to those who need it, so municipalities can fulfil the tasks for which they are responsible. Proposals to further define and strengthen municipalities' responsibility for supervision and the quality of service provision were submitted to the House of Representatives earlier this year.<sup>20</sup> With a view to enhancing quality and supervision at administrative level, municipalities are required to draw up four-year regional plans, setting out in detail how they aim to guarantee and monitor the quality of women's shelter services. Central government also finances quality improvements and innovation in women's shelter services. Recently, the Ministry invested more than €3 million in the Women's Shelters Improvement Plan for 2008-2013.
50. Women and children are usually admitted to women's shelters when they are victims of or at risk of domestic violence. Sometimes, however, women and children are placed in other shelters in the community. In 2009, after reports in the media that suggested there had been an alarming rise in the number of families becoming homeless after being evicted, the State Secretary commissioned Federatie Opvang to conduct an investigation into the number of

<sup>20</sup> Bill amending the Social Support Act in connection with the expansion of municipal responsibilities in the area of social support and amending the division of administrative responsibility, Parliamentary Papers, House of Representatives 2011-2012, 33127 no. 2; and the memorandum of amendment to the aforementioned bill, submitted to the House on 17 April 2012 (ref. DMO/SFI 3112889).



families involved. This Independent study – the only one available – did not find an increase in homeless families. Municipalities use the Urban Compasses, mentioned above, to assist homeless families through individualised programmes. In recent years, generous funding has been released to this sector. The study concluded there was adequate provision for homeless families in the four regional authorities investigated. Generally, municipalities try to prevent situations in which children are housed in shelters.

51. The regional authority for shelters in Rotterdam, for instance, regularly assesses need through surveys and expert meetings with care institutions and client representatives. St Radboud University Hospital recently conducted a study to gain insight into the characteristics and number of homeless families, as well as the factors contributing to the increase in the number of homeless families in shelters. The study identified a genuine need for shelter for among this specific group. Homelessness in families had various causes, such as the economic crisis, the more stringent approach to anti-social behaviour in housing and a late start in providing social support for vulnerable families.
52. It is clear from the above that the Netherlands has sufficient measures in place with regard to access to shelter for women with children.
53. With regard to FEANTSA's taking issue with the quality of shelter services, the Government would point to the Committee's decision in the case of *Defence for Children International v. the Netherlands* that 'as to living conditions in a shelter, under article 31, paragraph 2, the Committee holds that they should be such as to enable living in keeping with human dignity. The requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met.'<sup>21</sup> The Government has clearly established, in the descriptions above, that community shelter services in the Netherlands, and in particular women's shelters, meet these minimum requirements.

#### *Adolescents*

54. The Government takes the term 'adolescents' as used by FEANTSA to mean homeless youths under the age of 23 with multiple problems. Homeless youths under the age of 18 fall under the Youth Care Offices. Young people aged 18 years or older fall under the community shelter services. In 2009 the Ministry announced its intention to eliminate homelessness among

<sup>21</sup> Complaint No.47/2008, paragraphs 61 and 62.

young people. A count taken in 2010 showed that about 8,000 young people were homeless that year. Municipalities are responsible for coordinating actions to tackle homelessness among young people.

55. Adequate shelter and care for homeless youths is a key theme of the second phase of the Action Plan, launched in 2011. In order to improve support and shelter for homeless youths, the G4 will work closely with the Youth Care Offices with a view to providing a continuous guidance programme from the age of 17, as well as to better align municipal provision with specialised care, ensure adequate capacity and assistance at community shelter services for homeless youths (separate from adult facilities), develop easily accessible forms of shelter and counselling, and improve young people's use of and progression through the various forms of shelter to supported or independent housing. In this connection, central government will delegate all tasks in the area of youth care to the municipalities and encourage extended youth care to smooth the transition from youth care to adult welfare services as much as possible. Policy efforts aimed at homeless youths will also, of course, be incorporated in the Urban Compasses.
56. Ahead of the decentralisation mentioned above, the Ministry has launched a support programme entitled 'One step forward', aimed at helping municipal authorities improve services for homeless young people by at least one step. The wishes of young people themselves are explicitly recognised, so that any complaints they may have about shelter services can be addressed and alternative solutions sought.
57. The regional authority for shelters in Rotterdam, for instance, has been implementing policy directed specifically at homeless youths for some ten years now. Over time, the number of places for homeless young people has grown, so that demand can now be met completely. The need for shelter aimed specifically at homeless youths has now been clearly quantified. Currently, the total number of places available for this group is 852, comprising 100 intramural places, 570 assisted living places, 13 places in emergency shelters and 169 places for children of young mothers in shelters. Conditions at these facilities comply with all standards on appropriateness and safety. Shelter facilities for under-23s and adults (older than 23 years) are strictly separated, as mixing the groups is considered to have a negative impact on young people.

#### ***Progression of the housing situation***

58. Finally, FEANTSA claims homeless people meet with obstacles in making the transition to better housing, which it considers in contravention of articles 13, 30 and 31 of the Revised Charter. While the law provides for the possibility of graduating from emergency shelter to

independent accommodation, it is difficult to achieve in practice due to a shortage of transitional accommodation and affordable housing. As a result, people stay in emergency shelters for extended periods, with the accompanying heightened risk of relapsing into destitution, especially among homeless men as, according to FEANTSA, they do not have priority in the allocation of social housing.

59. The Government would note, first, that the transition from emergency shelter to permanent housing is a complicated issue, due not only to the limited availability of housing, but also the special needs of the persons concerned. The Government would emphasise that one of the priorities of the second phase of the Action Plan is to boost the progression of homeless persons in individualised programmes to other accommodation, as well as to promote their return to and integration and participation in society. During the first phase of the Action Plan, the G4 invested heavily in the development of adequate care services and supported housing in varying forms and intensity. The Government has previously informed the Committee<sup>22</sup> that the five-year target of the first phase of the Action Plan was to reach some 10,000 homeless persons in the G4, i.e. provide counselling and achieve transition to housing, income and work, or daytime activities. By the end of 2009, 9,750 persons in this group were no longer living on the streets.
60. However, the Government concedes that insufficient housing is available in some municipalities for the transition to permanent housing. This is due primarily to increased demand, particularly for the transition from care facilities to supported housing. In this regard, the shortage is attributable to the success of the first phase of the Action Plan. The Netherlands has a large stock of social housing, for which demand is high. Municipalities therefore give vulnerable groups, including women with children and people with disabilities, priority over other homeseekers. Because of the recession, social housing tenants are reluctant to move, which has exacerbated the housing shortage in this category in recent years.
61. Municipalities and housing associations have nevertheless made agreements on transferring former homeless persons to regular housing. Whether or not they will succeed in this aim will depend in part on the regional housing market and the extent that housing associations can depend on tenants getting adequate support. In the last few years, more and more municipalities have adopted the 'housing first' concept, in which homeless persons are allocated homes and receive intensive support as quickly as possible, thus avoiding an extended stay in community shelter services.

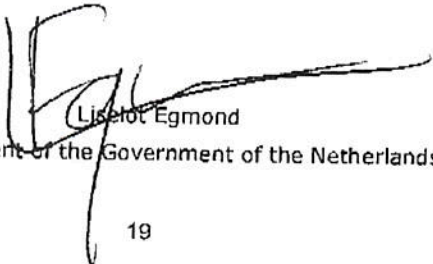
<sup>22</sup> ECSR Conclusions: The Netherlands – 2011 – article 31, paragraph 2.

62. In so far as FEANTSA claims that the lack of transitional arrangements is in conflict with article 31, paragraph 2, of the Revised Charter, the Government would note that the supply of temporary shelter, even if adequate, cannot be considered satisfactory and the individuals living in such conditions should be provided with adequate housing, if this is their wish, within a reasonable period of time. This is in keeping with one of the main objectives of the second phase of the Action Plan, which is aimed at the mainstreaming of people dependent on community shelter services and their reintegration and participation in society.
63. In view of the above, the Government is of the opinion that the current transfer arrangements for homeless persons are in accordance with articles 13, 30 and 31 of the Revised Charter.

### **Conclusion**

64. Community shelter services, as regulated in the WMO, are part of a larger package of measures at local and regional level aimed at preventing and combating homelessness and are intended for people who genuinely cannot hold their own. The regional authorities for shelters apply – out of necessity – criteria to determine eligibility for community shelter to restrict access to those persons who genuinely need it. The Ministry and the VNG act upon signals indicating that municipalities regulate access to social shelter not in accordance with the WMO, especially when the principle of nationwide access is or might not be sufficiently respected. The Plans of Action and the Urban Compasses underscore the ambitions of the Government and the regional authorities for shelters with regard to preventing and eliminating homelessness. The respective Monitors describe the positive results achieved thus far. With regard to shelter services aimed specifically at women, with or without children, and homeless young people, the Government and the regional authorities for shelters are determined to ensure sufficient and appropriate provision and have taken far-reaching measures to this end. With regard to progression in the housing situation it is important to encourage people dependent on community shelter services to move on and reintegrate and participate in society. This is one of the objectives of the second phase of the Action Plan and the Government and the municipalities, notably the regional authorities for shelters, will take measures to achieve this goal.
65. With regard to the merits of the present complaint, the Government concludes that the facts underlying the complaint do not point to a violation of the Revised Charter.

The Hague, 16 October 2012

  
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