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

4 June 2013

Case document No. 4

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

**FURTHER OBSERVATIONS OF THE
GOVERNMENT ON THE
ADMISSIBILITY AND THE MERITS**

Registered at the Secretariat on 30 May 2013

Ministry of Foreign Affairs

Mr Régis Brillat
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Date 30 May 2013
Re Complaint No. 86/2012
European Federation of National Organisations Working with the Homeless
(FEANTSA) v. the Netherlands

Dear Mr Brillat,

Further to your letters of 26 February 2013, 13 March 2013 and 24 April 2013, I have the honour, on behalf of the Government of the Netherlands, of submitting the following in reply to FEANTSA's further observations of 19 February 2013.

Insofar as FEANTSA's further observations concern the admissibility of the complaint, I would refer you to paragraphs 5 to 8 of our observations of 16 October 2012. In addition, I would draw the Committee's attention to my letter of 3 May 2013, including its two annexes, concerning complaint no. 90/2013, *Conference of European Churches v. the Netherlands*, setting out in greater detail the Government's objections against extending the scope of the Revised Charter beyond the restriction contained in paragraph 1 of its Appendix. I would ask the Committee to take the same arguments into account when considering the present complaint, insofar as it relates to persons not lawfully residing in the Netherlands. With respect to this group, I would stress that undocumented migrants who are not entitled to stay in the Netherlands – but who for reasons beyond their control cannot return to their country of origin and will not be granted entry there – may nevertheless be eligible for a residence permit.

The Government notes with some concern that FEANTSA's further observations on the merits of the complaint are not limited to discussing the information provided by the Government in its observations of 16 October 2012, but in several instances question the Government's intentions and reliability. For instance, FEANTSA alleges that the Government fails to recognise its obligations under the Revised Charter and is 'hiding' behind local authorities. On the contrary, there is no doubt about the State's responsibility to act under international law; however, this does not prevent the Government from delegating powers to regional and local authorities. When this takes place, the Government's duty is simply to explain to the Committee how the delegation of powers is organised and how the rights set out in the Revised Charter are guaranteed under these arrangements.

In response to FEANTSA's allegation that the information provided by the Government is not helpful in establishing the facts and that the Government has

failed to recognise the importance of assessing the need for shelter and other social assistance, I would merely stress once again the far-reaching nature of the measures described in detail in the Government's observations on the merits of the complaint. The crucial thing to note is that the Government has made substantial investments to get people off the streets and ensure that shelter is provided for them. Naturally, there is still room for improvement. For instance, FEANTSA rightfully claims that the list of contact persons (referred to in paragraph 19 of our observations) needs to be kept up to date – the most recent update having taken place in June 2012, not October 2011 as alleged by FEANTSA. However this can hardly be regarded as an indication of negligence on the Government's part in fulfilling its duties under the Revised Charter.

Date
30 May 2013

It should also be noted that in 'On the Way Home?', its monitoring report on homelessness and homeless policies in Europe, published in November 2012, FEANTSA itself concluded that the Netherlands and Finland are the only European Union member states where homelessness has decreased in the past five years as a result of a clear strategy.

This also puts the examples adduced by FEANTSA in its further observations into context. Firstly, individual examples of homelessness cannot be considered indicative of a situation of non-compliance by the Government with its obligations under the Revised Charter. In democratic societies, it will never be possible to fully eradicate undesirable phenomena such as homelessness, whatever policy may be pursued. Secondly, the example provided on page 3 of the further observations concerns a person residing unlawfully in the Netherlands who categorically refused to cooperate in his expulsion from the Netherlands and to whom support was nevertheless offered by the municipality of Arnhem. The examples summarised on pages 4, 6 and 7 of FEANTSA's further observations – entirely at the responsibility of FEANTSA – are currently being examined by the Committee on the Elimination of Discrimination against Women, the European Court of Human Rights and the Central Appeals Court for Public Service and Social Security Matters (*Centrale Raad van Beroep*) respectively. For the purposes of the present reply, it is merely necessary to note that as a matter of principle, cases that have not been decided upon by the body to which they have been submitted cannot be used to support any allegation of non-compliance in other proceedings.

In conclusion, the Government maintains that the complaint should be declared inadmissible insofar as it relates to persons not lawfully resident in the Netherlands, and unfounded in its entirety.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Böcker', with a long horizontal line extending to the right.

Roeland Böcker
Agent of the Government of the Netherlands