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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

9 May 2014

**Case No. 7**

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

**REPLY OF THE GOVERNMENT  
TO THE COMMITTEE'S QUERIES**

**Registered at the Secretariat on 7 May 2014**







**Reply of the Government of the Netherlands  
to the Committee's queries  
concerning Complaint No. 86/2012**

**EUROPEAN FEDERATION OF  
NATIONAL ORGANISATIONS  
WORKING WITH THE HOMELESS  
(FEANTSA)**

**v.**

**the Netherlands**

## **Introduction**

1. In its Note no. 2 of 8 April 2014 concerning the complaint lodged by the European Federation of National Organisations Working with the Homeless ('FEANTSA'), the European Committee of Social Rights ('the Committee') invited the Government of the Netherlands ('the Government') to provide the following material:
  - 1) *An English translation of Article 20 of the Social Support Act ("WMO"), as well as of any other individual provisions of national laws or regulations that set out criteria governing access to shelter for individuals belonging to the target group and for other vulnerable groups; and*
  - 2) *Information on the progress and outcome (if any) of the legislative proposals, to which the Government makes reference in their written submissions (see paragraphs 27-28 and 49 of the submissions of the Government on the admissibility and merits of 16 October 2012).*
2. The information requested is provided in the following paragraphs.

## **Reply to the Committee's first query**

3. Article 20 of the Social Support Act (*Wet maatschappelijke ondersteuning*; WMO) reads as follows:
  1. Our Minister may award a special-purpose grant for the purpose of policy in the area of public mental health care, community shelter services and drug addiction to municipalities designated by order in council.
  2. Our Minister may award a special-purpose grant for the purpose of policy in the area of women's shelter services to municipalities designated by order in council.
  3. Rules may be laid down by or pursuant to order in council with regard to:
    - a. the amount of the grant or the way in which it is determined;
    - b. grant applications and decision-making thereon;
    - c. the obligations attaching to the award of a grant;
    - d. the determination of the size of the grant;
    - e. the withdrawal or amendment of the decision to award and determine the size of the grant;

- f. payment or recovery of the grant and the award of advance payments on the grant.
4. A municipality that is awarded a grant as referred to in subsection 1 or 2 and that provides institutions with funds must ensure that such institutions keep a record of their activities in accordance with rules laid down by Our Minister by ministerial order and pass on the recorded information to an institution designated for this purpose by Our Minister.
5. A municipality that receives a grant as referred to in subsection 1 or 2 must consult with surrounding municipalities on how it is spent.
6. The assistance in the area of community shelter services and drug addiction policy funded by municipalities pursuant to subsection 1 and 2 is accessible to any person who lives in the Netherlands.
4. When reading subsection 6 of section 20 of the WMO it is necessary to bear in mind the principle of linking entitlements to residence status (*koppelingsbeginnel*) which, in the framework of the WMO, is laid down in section 8. The Government will address this principle in its reply to the Committee's second query.

## **Reply to the Committee's second query**

### ***Access for aliens to community shelter services***

5. The proposed amendment to the WMO referred to in paragraphs 27 and 28 of the Government's observations on the admissibility and merits of the complaint of 16 October 2012 resulted in an amendment to section 8 of the WMO, entering into force on 1 January 2014, which currently reads as follows:
1. An alien can only be eligible for individual assistance, women's shelter services or a payment as referred to in section 19a if he is lawfully resident within the meaning of section 8, subsection (a) to (e) inclusive and (l) of the Aliens Act 2000.
  2. An alien can only be eligible for community shelter services if he is lawfully resident within the meaning of section 8, subsection (a) to (e) inclusive and (l) of the Aliens Act 2000, except in cases referred to in article 24, paragraph 2 of Directive 2004/38/EC.
  3. Notwithstanding subsections 1 and 2, in cases designated by order in council, if necessary notwithstanding section 10 of the Aliens Act 2000, categories of aliens residing unlawfully in the Netherlands specified by or pursuant to that order may be wholly or partially eligible for assistance specified by that order or for a payment as referred to in section 19a. Eligibility for assistance or a payment as referred to in section 19a does not confer any right to lawful residence on an alien.
  4. The order referred to in subsection 3 may provide that the municipal executive is responsible for delivering the assistance designated by that order.

6. The last clause of subsection 2 relates to EU citizens who have stayed in the Netherlands for under three months and are not eligible for community shelter services. The thinking behind this is that the free movement of persons within the EU is not intended for, and should not result in, travel to other member states with the sole purpose, or at any rate the sole result, of almost immediately using community shelter services. If they consider it necessary, municipalities may offer assistance to EU citizens outside the framework of the WMO.

### ***Expanding the tasks of municipalities***

7. In paragraph 49 of the Government's observations of 16 October 2012 reference is made to a proposed amendment to the WMO in connection with the expansion of municipal tasks in the area of social support and amending the division of administrative responsibility, in order to enhance the quality of the assistance provided.
8. The intention was for this amendment to come into force from the start of 2013. However, during the previous government's caretaker period in the summer of 2012, consideration of the bill by the House of Representatives was suspended. The coalition agreement concluded by the current government of liberals and social democrats lays down that municipalities will assume full responsibility for support and assistance from the start of 2015. This requires a different and above all more wide-ranging expansion of the tasks of municipalities than envisaged in the bill referred to above. That bill was therefore superseded by a new bill submitted on 14 January 2014.<sup>1</sup>
9. Under the new bill, the municipal executive will be responsible for the quality and continuity of the assistance provided and must determine by bye-law what quality requirements will apply to the assistance and to the professionals who deliver it. The assistance provider is responsible for ensuring that it is provided safely, effectively and in a client-oriented manner, that it is adapted to the client's real needs and to other forms of care or help which the client is receiving, and that the professional providing the assistance fulfils his or her responsibilities as laid down in the applicable professional standards. The rights of the client must of course be respected throughout. The bill was adopted by the House of Representatives on 24 April 2014 and will, in all likelihood, be examined by the Senate before summer.
10. In addition, the municipal executive is responsible for conducting an annual survey of clients' views on the social support they have received, which it is required to publish.

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<sup>1</sup> Parliamentary Papers, House of Representatives 2013-2014, 33841, no. 2.

The Hague, 7 May 2014

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

Roeland Böcker  
Government Agent