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

5 November 2013

Case Doc No. 5

Conference of European Churches (CEC) v. The Netherlands
Complaint No 90/2013

**SUBMISSIONS OF THE GOVERNMENT IN RESPONSE TO
THE REQUEST FOR IMMEDIATE MEASURES**

Registered at the Secretariat on 2 September 2013



European Committee of Social Rights
Att. Mr Régis Brillat
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Date 2 September 2013
Re Complaint No. 90/2013
Conference of European Churches (CEC) v. the Netherlands

Dear Sir,

Further to your letter of 17 July 2013, in which you invited the Government to make written submissions on the applicant organisation's request for an immediate measure, I have the honour to respond as follows.

The applicant organisation asks the Committee to request the Government to suspend the operation of the Linkage Act with regard to shelter, food and clothing for all persons currently excluded from the scope of that Act and, alternatively, to suspend the operation of section 16, paragraph 2, of the Employment and Social Assistance Act (*WWB*) and section 8, paragraph 1, of the Social Support Act (*WMO*) to such an extent that undocumented migrants have access to shelter, food and clothing.

The Government is of the view that this request is unwarranted for several reasons.

The Government notes that the Committee has only recently introduced the possibility to indicate "immediate measures" in its rules of procedure and has not yet developed any case law regarding this issue. That being so, the Government can only draw a parallel with the "interim measure", a concept well-known from the case law of the European Court of Human Rights. One of the essential features of the latter is its full neutrality with regard to the final outcome of the proceedings, which it does not pre-judge in any way. Interim measures are imposed in situations where there is an imminent risk of irreparable harm, notably the expulsion of a person to a country where that person claims to become a victim of a violation of article 2 or 3 of the European Convention on Human Rights. Pending its decision on the merits of that claim, the Court may indicate an interim measure to the Government to the effect that an expulsion is postponed. Failing such measure, the individual right of petition might easily be rendered futile in expulsion cases. Other instances where interim measures were imposed include similar situations of *potential* human rights violations in individual situations. Where the Court ultimately decides that no violation is at issue, the interim measure will be lifted.

Even if the Committee had this in mind when introducing the possibility of immediate measures (although the term "immediate" suggests otherwise), this is much more complicated in the context of the Revised Charter.

First of all, the nature of the *collective* right of complaint would by definition imply the measures to be general in character with potentially far-reaching consequences, irrespective of individual circumstances. Lifting such measures at a later stage, in case no violation is found, may once again bring about unforeseen consequences.

Secondly, while measures in individual situations normally fall within the discretionary powers of the relevant authorities – for instance a minister or an executive agency – the suspension of Acts of Parliament by the Government at the mere request of an international body examining a complaint sits ill with the division of powers in a democratic society and would in any case be constitutionally impossible in the Netherlands.

Moreover, while interim measures were designed to avert a perceived *imminent risk of irreparable harm* (in other words: the interim measure will avoid any irreparable harm), the present request for an immediate measure would appear to be based on the view that irreparable harm has already been done.

The imposition of an immediate measure may hypothetically prevent any further harm, but the existence of such harm – past, present or future – is precisely what the parties disagree on. Granting an immediate measure would therefore be tantamount to accepting the applicant organisation's view. This, the Government is not willing to accept merely on the basis of the Committee's rules of procedure, without it having had an opportunity to give its views on the merits of the complaint and without the complaint having been duly examined by the Committee.

Finally, the request goes far beyond the boundaries of the Charter, as it seems to seek even a measure on behalf of persons not covered by the provisions of the Charter. The Government notes in this respect that the Committee has chosen to join the issue of the scope of the Charter in the light of the present complaint to its consideration of the merits of the complaint.

In conclusion, the Government objects to the applicant organisation's request for an immediate measure. It will, as requested in your letter of 16 July 2013, duly submit its observations on the merits of the complaint before the deadline indicated.

Yours sincerely,



Roeland Böcker
Agent of the Government of the Netherlands

Date
2 September 2013

Our ref.
90/2013