



16/10/2019

## **EUROPEAN SOCIAL CHARTER**

Comments by the Protestant Church in the Netherlands on the 12<sup>th</sup> simplified report on the implementation of the revised European Social Charter

submitted by

**THE NETHERLANDS**

**Follow-up to collective complaint No. 90/2013**

Comments registered by the Secretariat on

16 September 2019

**CYCLE 2019**



**Developments 2015-2019 after the ECSR's decision on the CEC Complaint regarding the European Social Charter (Conference of European Churches vs The Netherlands, Complaint 90/2013)**

## Introduction

On the 10th of November 2014, the European Committee of Social Rights (ECSR) published its decision on the merits of the complaint lodged by the Conference of European Churches holding that The Netherlands violated the Charter by failing to offer shelter to irregular adult migrants.<sup>1</sup>

The main elements of the decision are:

- Human dignity is a fundamental value at the core of European Human Rights law (paragraph 115). Human dignity includes among others access to basic shelter and minimum essential food for everyone, **regardless of residence status** (paragraphs 114, 137).
- The large majority of irregular migrants in The Netherlands are provided shelter **neither in law, nor in practice** (paragraph 143).
- Irregularly staying persons are undeniably at risk of serious and irreparable **harm to their life and human dignity** when being excluded from access to shelter, food and clothing (paragraph 122). Denying the right to emergency assistance disproportionately restricts the life of adult irregular migrants in the Netherlands (paragraph 124).
- The provision of emergency assistance **cannot be made conditional** upon the willingness of the persons concerned to cooperate in the organisation of their expulsion (paragraph 117). Shelter must be provided to adult migrants in an irregular situation, **even when they are requested to leave the country** and even though they may not require long-term accommodation (paragraph 144).
- Although states may decide to delegate certain tasks to **local authorities**, such delegation does not relieve them from their obligations (paragraph 118). And while **NGOs, churches and individuals** do grant emergency assistance, the committee considers that, especially in a situation where this delegation of tasks of responsibilities is not based on any legal, administrative or financial agreement or safeguards, the prevailing situation cannot fulfil the positive obligations assumed by the Government (paragraph 119).
- The Committee is unable to consider that the denial of emergency shelter to irregularly staying individuals is an **absolutely necessary measure** for achieving the aims of the immigration policy. No indications of the concrete effects of this measure have been referred to by the Government (paragraph 121).
- Although emergency shelter cannot be considered a lasting solution (paragraph 140), states cannot be required to provide alternative accommodation to irregular migrants. But **eviction** from the shelters should be banned (paragraph 141).

In the following overview we try to show how the Netherlands responded from 2015 until 2019. Decisions taken by the National Government, courts and politicians have set the scene for the situation in 2019. Under A-D we provide an overview of judicial developments. In section E we describe the development of a national scheme of pre-Pre-Removal Centres and in section F the other options which irregular migrants officially have. In the final section we draw conclusions with respect to the decision of the ECSR. A summary of developments is attached on the last pages.

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<sup>1</sup> ECSR Complaint No. 90/2013, 1.7.14: <http://hudoc.esc.coe.int/eng?i=cc-90-2013-dmerits-en>

## A) 2014-2016 - Municipal shelters receive financial compensation while negotiations for a national scheme end up unsuccessfully

The first judicial decision was taken in December 2014 by the Central Appeals Court<sup>2</sup>, obliging municipalities to offer night-shelter, shower and food to irregular migrants in their region until at least two months after the decision of the Council of Ministers of the Council of Europe<sup>3</sup> on the ESCR-decision. Immediately after this judgement, several municipalities declared that they felt obliged to follow this judgement. The VNG (Association of Dutch Municipalities) requested the Minister for Migration (State Secretary for Justice and Security) to compensate these municipalities, which he accepted on 19 January 2015.<sup>4</sup> The compensation would be paid until 2 months after the decision of the Council of Ministers. That decision was taken on 15 April 2015.<sup>5</sup> Until 15 June 2015, 32 municipalities had offered shelter to 1285 irregular migrants.<sup>6</sup> These shelters were called Bed-Bath-Bread-shelters (BBB's).

The decision of the Council of Ministers led to an intense debate within the (coalition) Government, resulting in a plan to offer temporary shelter to irregular migrants in a few pre-Pre-Removal centres, where they would be offered counselling in order to accept the return decision. This plan, announced in a Government letter of 22 April 2015<sup>7</sup>, however was never realized, despite an intensive preparation process of the National Government with a delegation of the Association of Municipalities. In November 2016 the preparations were officially terminated by the Minister for Migration.<sup>8</sup> Municipalities offering shelter to irregular migrants were compensated for their costs until this date. In December 2016 (most recent nationwide research), at least 37 municipalities offered shelter to 1.435 irregular persons and 25 families.<sup>9</sup>

## B) 2015-2016 - Pre-Removal Centre in Ter Apel: judicially sufficient, access in practice limited

On 26 November 2015, the two highest courts together decided that the existing Pre-Removal Centre (in Dutch: *VrijheidsBeperkende Locatie*, VBL) in Ter Apel was a sufficient shelter provision for irregular migrants.<sup>10</sup> According to the Government, the requirement to cooperate on his/her return was not a violation of articles 3 and 8 of the European Convention on Human Rights (ECHR). The Courts insisted that the decision about admission of migrants in the Pre-Removal Centre (VBL) in Ter Apel had to take into account whether the migrant, due to his psychological state, could be considered capable of overseeing the consequences of his actions.

In most cases in 2016, the Administrative Jurisdiction Division of the Council of State (hereafter: Council of State)<sup>11</sup> decided that for irregular migrants, the Pre-Removal Centre (VBL) Ter Apel was sufficient. Even for migrants with a pending asylum-procedure (and no obligation to leave)<sup>12</sup>, a

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<sup>2</sup> Dutch: Centrale Raad van Beroep, CRvB

<sup>3</sup> CRvB 14-6024 WMO-VV, 14/5507 WMO-VV, 14/5453 WMO-VV, 14/5444 WMO-VV, 17/12/2014.

<sup>4</sup> Parliamentary document (Kamerstuk) 19637, nr. 1944.

<sup>5</sup> Resolution CM/ResChS(2015)5.

<sup>6</sup> Parliamentary document 34300-VI nr. 19, 19/11/2015.

<sup>7</sup> See: <https://zoek.officielebekendmakingen.nl/kst-19637-2259.html>.

<sup>8</sup> Parliamentary document 19637: 2259, 21/11/2016.

<sup>9</sup> Valse hoop of bittere noodzaak - opvang van mensen zonder verblijfsrecht, Amnesty International and Stichting LOS, May 2017.

<sup>10</sup> ABRvS, 201500577/1/V1, 26/11/2015 and CRvB (MK), 15-4189 WMO, 26/11/2015.

<sup>11</sup> Dutch: Afdeling bestuursrechtspraak van de Raad van State (ABRvS).

<sup>12</sup> CRvB 15/7075 WMO15, 15/7249 WMO15, 15/7264 WMO15, 15/7336 WMO15, 15/7458 WMO15 15/8130 WMO, 15/8132 WMO, 15/8136 WMO, 15/8127 WMO, 16/952 WMO, 24/02/2016; and CRvB14/5609 WMO, 27/07/2016.

woman with psychological problems<sup>13</sup>, or for people who had to leave the Aliens Detention Centre as they couldn't be expelled<sup>14</sup>. Irregular migrants who stated that they couldn't return due to no fault of their own, were referred to the No Fault Procedures<sup>15</sup> or to the possibility to return to 'another country'<sup>16</sup>. The requirement for irregular migrants to cooperate with return as a condition for receiving shelter was maintained.

Whether irregular migrants are admitted to the Pre-Removal Centre (VBL) Ter Apel is decided by the Repatriation and Departure Service (DT&V) that uses an unofficial 'policy guide' for this decision.<sup>17</sup> According to the Council of State, the final responsibility for admission to shelter for migrants outside the scope of the Scheme on Benefits for Asylumseekers (Regeling Verstrekkingen Asielzoekers), lies with the Minister for Migration.<sup>18</sup>

In July 2016, several sick irregular migrants tried to gain access to the Pre-Removal Centre (VBL) Ter Apel. From the communication at the front gate it was clear that these migrants were unable to comprehend their situation. Nevertheless they were denied access. In these cases, the Council of State decided that the decisions were not in accordance with the official policy.<sup>19</sup> The Minister for Migration had to investigate whether the available health care in the Pre-Removal Centre (VBL) Ter Apel was sufficient for the special needs of a person with mental health problems.<sup>20</sup>

### **C) 2016-2017 - 'Extra-legal beneficial policy' of municipalities possible, but to be applied consistently**

The case of the city of Amsterdam requires special attention. The city had established its own local night shelter and 24-hours shelter for irregular migrants in 2015.<sup>21</sup> The Council of State concluded that municipalities are not obliged to offer shelter, but as the city of Amsterdam had developed its own policy, it should implement this 'extra-legal beneficial policy' consistently.<sup>22</sup> In August 2016, the Council of State decided that Amsterdam violated its own policy by not offering 24h shelter to a vulnerable migrant.<sup>23</sup> And in October 2016 the Court of Justice decided that vulnerable migrants should get 'warm transfer' if they had to change the 24h shelter accommodation.<sup>24</sup> In November 2017, the Council of State decided that decisions on the 'vulnerability criterion' of the Amsterdam Policy (which was relevant for admission on either the night shelter or the 24h shelter) had to be 'transparent and conclusive'.<sup>25</sup>

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<sup>13</sup> RvS 201502093/1/V1, 16/03/2016.

<sup>14</sup> RvS 201503799/1/V1, 13/04/2016.

<sup>15</sup> RvS 201409943/1/V1, 11/02/2016, RvS 201409961/1/V1, 11/02/2016.

<sup>16</sup> RvS 201603039/1/V1, 13/07/2016.

<sup>17</sup> See

[https://www.dienstterugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek\\_tcm49-145473.pdf](https://www.dienstterugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek_tcm49-145473.pdf), newest edition 16/03/2015.

<sup>18</sup> RvS 201204913/1/V1, 24/02/2014.

<sup>19</sup> RvS 201701248/1/V1, 201605550, 201701724, 05/07/2017.

<sup>20</sup> RvS 201710361/1/V1, 201710361/2/V1 and 201710361/3/V1, 26/01/2018.

<sup>21</sup> See [https://assets.amsterdam.nl/publish/pages/893816/52\\_programma\\_vreemdelingen\\_26-02-2015.pdf](https://assets.amsterdam.nl/publish/pages/893816/52_programma_vreemdelingen_26-02-2015.pdf), 26/02/2015.

<sup>22</sup> RvS 201601948/1/V1, 201601397/1/V1, 201601400/1/V1, 201601402/1/V1, 201601406/1/V1 and 201601407/1/V1, 29/06/2016.

<sup>23</sup> RvS 201601907/1/V1, 24/08/2016.

<sup>24</sup> Court Amsterdam (Gerechtshof Amsterdam) 200.200.481/01 SKG, 21/10/2016.

<sup>25</sup> RvS 201706823/1/V1. 15/11/2017.

## D) 2016 - Hunde-case: options for irregular migrants stipulated

In July 2016, the European Court of Human Rights (ECtHR) decided in the Hunde-case<sup>26</sup> that the National Policy to refuse shelter to irregular migrants was not a violation of articles 3 and 8 of the ECHR. The Court decided (paragraph 59):

- 'In the first place, the applicant had the possibility of applying for a **“no-fault residence permit”** and/or
- to seek admission to a centre where his liberty would be restricted (**the VBL**).
- It is furthermore possible for irregular migrants to seek a **deferral of removal for medical reasons** and to receive free medical treatment in case of emergency.
- In addition, the Netherlands have most recently set up a special scheme providing basic needs for irregular migrants living in their territory in an irregular manner. It is true that that scheme was only operational as from 17 December 2014. However, it is inevitable that the design and practical implementation of such a scheme by local authorities of different Municipalities takes time. Moreover, the scheme was brought about as a result of a series of elements at the domestic level, including the applicant's pursuit of domestic remedies in connection with his Article 3 claim.

In these circumstances it cannot be said that the Netherlands authorities have fallen short of their obligations under Article 3 of the Treaty by having remained inactive or indifferent.'

## Conclusion A-D, judicial follow-up

Concluding, the Dutch judges decided that the Minister for Migration (State Secretary for Justice and Security) is responsible to offer shelter to irregular migrants, but that in general shelter in the Pre-Removal Centre (VBL) Ter Apel is sufficient. This can be different for irregular migrants with mental health problems. However, if a municipality voluntarily creates a special shelter-policy for irregular migrants, the municipality is obliged to implement its own policy.

The ECtHR decided that The Netherlands offers sufficient possibilities for irregular migrants to find shelter, especially given that the National Government was elaborating a National Shelter Scheme.

## E) 2017-2019 - Development of a national pre-Pre-Removal Centres policy

As described in the Hunde case above, the National Government started in December 2014 to develop plans for new shelters for irregular migrants, in addition to the Pre-Removal Centre (VBL) Ter Apel.

The first plan to create pre-Pre-Removal centres (pre-VBL's) in eight cities was never operational and preparations for it ended in November 2016.<sup>27</sup>

In a policy document<sup>28</sup> published by the Dutch Government in October 2017, a new shelter-policy was presented: under the direction of the DT&V, in eight cities so-called National Aliens Provisions (in Dutch: *Landelijke Vreemdelingen Voorzieningen*, LVV's) would be established where irregular migrants would get two weeks to rest, after which they should cooperate with their return in order to keep their right to shelter.

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<sup>26</sup> EHRM Gadaa Ibrahim Hunde v Nederland, no.17931/16, 05/07/2016.

<sup>27</sup> Parliamentary document 19637, nr. 2259, 21/11/2016.

<sup>28</sup> See <https://www.rijksoverheid.nl/regering/regeerakkoord-vertrouwen-in-de-toekomst>, 10/10/2017.

An agreement between the Association of Municipalities (VNG) and the National Government to establish LVV's was presented in November 2018.<sup>29</sup> Aim of the LVV's is: 'to accompany irregular migrants to independent return, migration to a third country or, if applicable, legalization of residence'. Important elements of the new policy are:

- The project starts with a pilot in 5 cities: Amsterdam, Rotterdam, Utrecht, Eindhoven, Groningen. These cities will transform their existing system of shelters for irregular migrants into a LVV. In other (non-LVV) cities the existing Bed-Bath-Bread shelters can continue for the moment. National roll-out of the LVV's is only foreseen after the pilot period of 18 months has ended and the project has been evaluated.
- In all five municipalities, migrants with a strict entry ban of 10 years and more, aliens formally defined as undesirable, EU citizens and Dublin claimants are not admitted to the shelters. In Rotterdam, migrants from so-called 'safe countries' can be accepted only for 3 months. All municipalities except for Amsterdam restrict access to the LVV to migrants coming from their own municipality or from a certain area surrounding the municipality ('regional connection').
- The National Government subsidises the LVV's with € 59 mln for the years 2019-2021. For 2018, € 12 mln is available for all municipal shelters together.
- Irregular migrants are requested to leave the shelters 'if the guidance in the LVV does not contribute to a lasting solution and perspective for the person concerned'. In two cities (Amsterdam and Rotterdam) the duration of the shelter is limited (to 18 months and 6 months respectively).
- Decisions about entry and departure of the LVV's are the responsibility of a Local Cooperation Board (in Dutch: *Lokaal Samenwerkings Overleg*, LSO). These meetings take place under the responsibility of the municipality and supervision of DT&V. Other members are the Aliens Police (AVIM), the Immigration Service (IND) and the local shelter organisation.
- Municipal officers are responsible for admission to and departure from the LVV. They are officially mandated by the Minister for Migration to this end. In the five local Covenants, the shelters are defined as 'non-statutory beneficiary policy'<sup>30</sup>. Admission and departure are considered 'actual acts' against which migrants may lodge a complaint.

As from 1 July 2019, LVV-shelters have started in five cities. In total, they promised to offer shelter to the following number of irregular migrants:

- Amsterdam 360 persons, with a prospect of a durable solution of 20% is 72 persons
- Rotterdam 117 persons, with a prospect of a durable solution of 50 persons
- Utrecht 235 persons, with a prospect of a durable solution of 20% is 47 persons
- Eindhoven 130 persons, with a prospect of a durable solution of 20% is 26 persons
- Groningen 300 persons, with a prospect of a durable solution of 40% is 120 persons

In total shelters are available for 1142 persons, they would offer a durable solution for at least 315 persons. This means that the LVV already foresees that the aim of the provision will only be reached for a quarter of the population. The others will have to leave the LVV shelters, 'in order to make room for other irregular migrants for whom a solution is within reach'.<sup>31</sup>

Next to the five LVV-cities, in 2019 there are 27 other municipalities that receive funding from the so-called Municipal Fund for Bed-Bath-Bread shelters.<sup>32</sup> In the LVV-agreement it was decided that

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<sup>29</sup> Parliamentary document 19637 nr. 2445, and Getekende Samenwerkingsovereenkomst [https://vng.nl/files/vng/brieven/2018/attachments/20181130\\_getekende-samenwerkingsafpraak-lvv.pdf](https://vng.nl/files/vng/brieven/2018/attachments/20181130_getekende-samenwerkingsafpraak-lvv.pdf).

<sup>30</sup> See e.g.

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/07/01/bijlage-convenant-groningen/bijlage-convenant-groningen.pdf>.

<sup>31</sup> Covenants for each of the five cities. Annexed to:

<https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/01/antwoorden-kamervragen-over-de-ongerustheid-in-amsterdam-rond-de-pilot-landelijke-vreemdelingen-voorziening>.

<sup>32</sup> <https://www.rijksoverheid.nl/documenten/circulaires/2019/05/31/meircirculaire-gemeentefonds-2019>.

these municipalities also receive compensation for the shelter they offer.<sup>33</sup> Each of these BBB-shelters has its own rules of entry, but most of them require either 'vulnerability' or 'a reasonable prospect to a durable solution'. Migrants who don't qualify are refused. Apart from these formal criteria, there are in most cases also practical criteria because the resources are limited. Moreover, many municipalities do not offer such shelter at all.

Apart from the city of Amsterdam, all LVV's and Bed-Bath Bread shelters are only accessible for irregular migrants from 'the region' (i.e. near to the municipality involved), which means that many irregular migrants who are from regions where no LVV or BBB-shelter exists, do not have any option to find shelter.

To conclude, the National Government has used the decision of the ECSR to include the existing municipal shelters for irregular migrants into a National shelter scheme. To this end, the National Government compensates the municipalities financially, and accepts that some irregular migrants may still be entitled to a residence permit. On the other hand, the municipalities had to accept that for most irregular migrants, return is the only option and if the migrants in their shelters wouldn't cooperate with that, they would have to leave the shelters.

At the moment however, the LVV's don't cover the whole country, so that **many irregular migrants cannot find a shelter at all**. And even when the LVV's will be in full operation, there are still exclusion clauses which means that **many irregular migrants still are refused shelter**.

## F) Other options for irregular migrants according to the Hunde-case

According to the ECtHR in the Hunde-case, there are also other options for irregular migrants to get access to basic needs, these are:

- applying for a "no-fault residence permit"
- admission to a centre where his liberty would be restricted (VBL)
- to seek a **deferral of removal for medical reasons**

In this paragraph we describe how these options work out in practice.

### No Fault Residence Permit

The No Fault Residence Permit can be obtained if the DT&V concedes that the person concerned has done 'everything possible to find travel documents'<sup>34</sup> without success. (This implies that the person has contacted the IOM for help, and applied to the embassy of his or her country in order to obtain a Laissez Passer). In most cases, embassies don't respond to these requests, and the DT&V considers this the fault of the migrant. In these cases, the DT&V almost never writes a letter of recommendation. Without such a letter, the IND normally does not grant the No Fault Residence Permit. Recently however, the High Court decided that the IND has its own responsibility to evaluate the efforts of the migrant concerned.<sup>35</sup>

During the preparation time for a No Fault Residence Permit, there is no right to shelter, nor is there during the evaluation of the request by IND and the decision of the court thereafter.

Given the numbers, the No Fault Residence Permit is only a solution for very few people<sup>36</sup> :

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<sup>33</sup> € 4,8 mln in 2019, € 2,9 mln in 2020 and € 1,6 mln in 2021.

<sup>34</sup> Vreemdelingencirculaire B8/4:

[https://wetten.overheid.nl/BWBR0012289/2019-08-01#Circulaire.divisieB8\\_Circulaire.divisie4](https://wetten.overheid.nl/BWBR0012289/2019-08-01#Circulaire.divisieB8_Circulaire.divisie4).

<sup>35</sup> RvS 201808225/1/V2, 25/06/2019; <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2019:1973>.

<sup>36</sup> ACVZ Quicksan Buitenschuldbeleid, 2017. No recent numbers available.



	2012	2013	2014	2015	2016 *
Requests	240	90	80	50	50
Permits	40	10	20	10	10

\* 2016: up to and including October

### VBL

The VBL offers shelter to irregular migrants who are willing to cooperate with their return. Admission is at the discretion of the DT&V.<sup>37</sup> As described above, the DT&V always has to assess the willingness to cooperate on an individual basis. But this decision of the DT&V is almost never contested in court.

Numbers of migrants who stay in the VBL are:<sup>38</sup>

1 january 2019		170
1 january 2018		210
1 january 2017		380
1 january 2016		190
1 january 2015		210

These numbers are considerably smaller than the numbers of irregular migrants in the Municipal LVV shelters and BBB shelters.

### Deferral of Removal for Medical Reasons

A 'deferral of removal for medical reasons' (article 64 Aliens Law) can be obtained if the necessary health care is not available in the country of origin. As a result of the Paposhvili-case<sup>39</sup>, the conditions for this article-64 status are adapted: the article 64-status can also be obtained if the necessary health care is not accessible for the individual migrant in the country of origin.

In order to apply for an article 64-status, the irregular migrant has to present documentation on his state of health, availability of health care in the country of origin, costs of treatment, financial resources and chances to find a job in the country of origin. If all the necessary documentation is presented with the request, and the Office for Medical Advice (in Dutch: *Bureau Medisch Advies*, BMA) cannot advise within 2 weeks, then the irregular migrant can get shelter in an Asylum Seekers Centre (AZC). But during the time necessary to prepare the documentation, the migrant has no right to shelter.

A research done for the Government to find out why rejected asylum seekers failed to leave the Netherlands, found that out of a group of 1.960 people who were in a Pre-Removal Centre for people with children under 18 years, between 1 January 2015 and 31 October 2018, 1.300 times a request for article 64 status had been lodged, and in 30% of cases successfully.<sup>40</sup>

<sup>37</sup> See

[https://www.dienstterugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek\\_tcm49-145473.pdf](https://www.dienstterugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek_tcm49-145473.pdf), newest edition 16/03/2015.

<sup>38</sup> Netherlands Government, Annual reports on migration years 2015-2018 (Rapportage Vreemdelingenketen).

<sup>39</sup> ECtHR 41738/10, 13/12/2016.

<sup>40</sup> Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht, 4-6-2019. An article in the newspaper NRC Handelsblad, dated 21 June 2019, estimates that annually between 1.400 and 2.000 times an application for an article 64-status is done, of which roughly one-third is approved by the IND.

## Conclusions

In comparison with the situation in 2014, only the involvement of the National Government with the shelters in the five LVV-cities and the national subsidy for LVV- and BBB-shelters are new. At the moment (August 2019), irregular migrants have access to food, clothing and shelter in the following cases:

- in the Pre-Removal Centre VBL Ter Apel if they cooperate with their return according to DT&V. Irregular migrants with mental health problems have right to a special shelter, but in practice they only get access to these shelters if they insist on this right before court,
- in the five Municipal LVV's as long as they cooperate with a 'durable solution' according to the Local Cooperation Board (LSO),
- in the other Municipal BBB shelters, if they fulfill the entry-criteria of these shelters,
- in the Asylum Centres (AZC) during the time they are waiting for a decision on a request for 'deferral of removal for medical reasons' (article 64), and during the first year that this article-64-status has been granted. If the status is prolonged, access to general social security is granted,
- irregular migrants who cannot return due to 'No Fault of their own' get access to general social security as soon as their request is accepted.

This means that there is no access to food, clothing and shelter for irregular migrants who:

- are not in an admission procedure for article 64 and
- don't cooperate with their return according to the DT&V, or
- if they are from a region with LVV or Municipal BBB-shelter: don't fulfill the criteria of the shelter (any more),
- if they find themselves too far from a LVV of Municipal BBB-shelter and thus cannot comply with the 'regional' criterion.

**The current situation regarding shelter for irregular migrants is still in violation with decision 90/2013 of the ECSR because:**

**Access to shelters conditional:** The criteria for 'cooperation to leave' are unclear and depend on the assessment of lower-level officers of the DT&V (for the Pre-Removal Centre VBL Ter Apel) or the LSO's (in the LVV-cities) or even NGO-workers (in the Municipal BBB-shelters). This is a violation of paragraphs 117<sup>41</sup> and 144<sup>42</sup>.

**Eviction from shelters still policy:** For the LVV-shelters, it is official policy to remove irregular migrants if no long-lasting solution is within reach. This is a violation of paragraph 141.<sup>43</sup>

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<sup>41</sup> Paragraph 117: The Committee observes in this connection that the scope of the Charter is broader and requires that necessary emergency social assistance be granted also to those who do not, or no longer, fulfil the criteria of entitlement to assistance specified in the above instruments, that is, also to migrants staying in the territory of the States Parties in an irregular manner, for instance pursuant to their expulsion. The Charter requires that emergency social assistance be granted without any conditions to nationals of those States Parties to the Charter who are not Member States of the Union. The Committee equally considers that the provision of emergency assistance cannot be made **conditional** upon the willingness of the persons concerned to cooperate in the organisation of their own expulsion.

<sup>42</sup> Paragraph 144: In light of the Committee's established case-law, shelter must be provided also to adult migrants in an irregular situation, **even when they are requested to leave the country** and even though they may not require that long-term accommodation in a more permanent housing be offered to them.

<sup>43</sup> Paragraph 141: ... **Eviction** from shelter should accordingly be banned, as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity.

**No national coverage:** Until now, the National Government doesn't guarantee national coverage. In practice, the number of migrants who stay in the pre-Removal Centre (VBL) in Ter Apel is limited. Outside the municipalities with LVV's or BBB's, shelter is not available. It will take at least until September 2020 that an interim evaluation of the pilots will start, and thereafter, negotiations can start for a programme of national coverage.

**No national safeguards:** Next to the five municipalities that offer LVV-shelters, the other municipalities who offer BBB-shelter are independent. Although they are compensated for their costs, decisions on access and departure in the BBB-shelters are not based on a formal agreement with the National Government. As the provision of shelter to irregular migrants should be guided by legal, administrative and financial agreements or safeguards, this situation is still a violation of paragraph 119.<sup>44</sup>

**No respect for Human Dignity:** This means that the Dutch shelter policy for irregular migrants still is not in accordance with the decision of the ECSR and the Dutch authorities do not respect the human dignity of irregular migrants, in violation of paragraphs 114, 115, 122 and 137<sup>45</sup> of the ECSR's decision on the complaint of the Conference of European Churches against The Netherlands.

## Acknowledgements

The Protestant Church in the Netherlands expresses its gratitude to Mrs. Rian Ederveen, Stichting LOS, for preparing the first draft of this report.

## Annex: Summary of trends

Summarizingly, the following changes may be observed in the options of access to food, clothing and shelter of irregular migrants in the Netherlands:

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<sup>44</sup> Paragraph 119: While it is undisputed between the parties that the local authorities may grant emergency assistance to adult migrants in need of such assistance when in an irregular situation, and while this is also done by such third parties as non-governmental organisations, churches and individuals, the Committee considers that especially in a situation where this delegation of tasks or responsibilities is not based on any legal, administrative or financial **agreements or safeguards** agreed upon between the Government and the bodies factually providing assistance in order to provide for legal certainty, the prevailing situation cannot fulfil the positive obligations assumed by the Government under Article 13§4.

<sup>45</sup> paragraph. 114: The Committee secondly takes note of the so-called core obligations defined by the Committee on Economic, Social and Cultural Rights of the United Nations, which the said Committee considers as non-derogable, as well as linked to the **dignity** of the human person. These obligations include access to basic shelter and minimum essential food for everyone, regardless of residence status.

recital 115: The Committee recalls that human **dignity** is the fundamental value and the core also of European human rights law.

recital 122: The Committee observes, similarly, that the persons concerned by the current complaint undeniably find themselves at risk of serious irreparable harm to their life and human **dignity** when being excluded from access to shelter, food and clothing. It refers to its established case-law under the reporting procedure (see paragraphs 73, 106) and holds that access to food, water, as well as to such basic amenities as a safe place to sleep and clothes fulfilling the minimum requirements for survival in the prevailing weather conditions are necessary for the basic subsistence of any human being.

recital 137: The Committee has repeatedly considered that the right to shelter is closely connected to the right to life and crucial for the respect of every person's human **dignity**.

### **Municipal Bed-Bath-Bread shelters (BBB's)**

- After the decision taken in December 2014 by the Central Appeals Court, various municipalities felt strengthened to offer shelter to undocumented migrants.
- Until 15 June 2015, 32 municipalities had offered shelter to 1.285 irregular migrants. These shelters were called Bed-Bath-Bread-shelters (BBB's).
- In December 2016 in total 37 municipalities hosted 1.435 persons and 25 families in BBB facilities.
- These BBB's have been financed partly by the municipalities themselves, partly by the Government of the Netherlands (by the Municipalities Fund, in Dutch: *Gemeentefonds*). In 2019, 27 municipalities were entitled to receive a financial contribution from this fund.
- The agreement between the Association of Municipalities (VNG) and the Government of the Netherlands to establish pre-Pre-Removal centres (in Dutch: *Landelijke Vreemdeling Voorzieningen*, LVV's) presented in November 2018 states that 'due to the establishment of LVV's, the need for municipal BBB's will gradually decrease'. Funding from the Municipalities Fund will be reduced accordingly.
- Decisions on access and departure in the BBB-shelters are not based on a formal agreement with the National Government. People have to fulfil the entry-criteria of these shelters.
- There is no national coverage of BBB's.

### **Pre-Pre-Removal Centres (LVV's)**

- In april 2015, after the decision of the Council of Ministers of the Council of Europe<sup>46</sup> on the decision of the European Committee of Social Rights (ECSR), the National Government started negotiations with a delegation of the Association of Municipalities, resulting in a plan to offer temporary shelter to irregular migrants in a few pre-Pre-Removal centres (LVV's). The preparations, terminated in November 2016, were resumed in October 2017, resulting in an agreement with five municipalities in November 2018.
- The pilot cities will transform their existing system of shelters for irregular migrants into an LVV. National roll-out of the LVV's is only foreseen after the pilot period of 18 months has ended and the project has been evaluated (after September 2020).
- The covenants foresee in total shelter places available for 1.142 persons, they would offer a durable solution for at least 315 persons.
- Access is conditional as long as migrants cooperate with a 'durable solution' according to the Local Cooperation Board (LSO).
- As long as the system is in a pilot phase, there is no national coverage.

### **Pre-Removal Centre Ter Apel (VBL)**

- This facility already existed before the Decision of the Committee in 2014 (actually since the implementation of the Aliens Law 2000).
- On 26 November 2015, the two highest courts together decided that the Pre-Removal Centre (in Dutch: *VrijheidsBeperkende Locatie*, VBL) in Ter Apel was a sufficient shelter provision for irregular migrants.
- Between 1 Januari 2015 and 1 January 2019 it actually hosted between 170 and 380 migrants annually, in most years around 200 people.
- To get access, irregular migrants have to cooperate with return as a condition for receiving shelter.

### **'No Fault of their own' residence permit**

- Irregular migrants who cannot return can apply for a 'No Fault of their own' residence permit and can get access to general social security as soon as their request is accepted.

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<sup>46</sup> CRvB 14-6024 WMO-VV, 14/5507 WMO-VV, 14/5453 WMO-VV, 14/5444 WMO-VV, 17/12/2014.

- In the years 2012-2016 (no recent data available), annually 10-40 persons were able to receive a permit on this ground, with a decreasing tendency.

**'Deferral of removal for medical reasons'**

- Migrants can get access to the Asylum Centres (AZC's) during the time they are waiting for a decision on a request for 'deferral of removal for medical reasons' (article 64), and during the first year that this article-64-status has been granted.
- It is estimated that annually 500 times an application for 'Deferral of removal for medical reasons' is approved.