

# The Revised European Social Charter: what use for what impact?

"Advancing the implementation of socio-economic rights by making  
better use of the monitoring procedures of the European Social  
Charter"

Webinar June 14, 2022

## Collective Complaint 86/2012 FEANTSA v The Netherlands

by

Pim Fischer and Joris Sprakel

# Brief introductions

- Pim Fischer
  - Activist since birth
  - Lawyer (advocaat) since 1992
  - Fischer Advocaten since 1995
  - Three collective complaints (*DCI v Netherlands*, *FEANTSA v Netherlands*, and *CEC v. Netherlands*)
  - Professional focus: human dignity for undocumented migrants
- Joris Sprakel
  - Lawyer (advocaat) since 2006
  - Three collective complaints (*DCI v Netherlands*, *FEANTSA v Netherlands*, and *CEC v. Netherlands*)
  - Lecturer International & Human Rights since 2008
  - Professional focus : shelter (access) and housing
- *FEANTSA v. Netherlands*
  - Cause for invitation
  - Part of three “linked” cases (at least for us)
  - Hence we start with a short background story

# Background

- Netherlands
  - No constitutional review by courts
  - Direct application of international law by courts
  - “only” self-executing norms (so no ESC rights)
- 1998 Linkage Act (Koppelingswet)
  - Linking all government databases in order to combat fraud
  - Exclusion of undocumented migrants from government services (focus on return)
- 2005 / 2006 Case A1
  - Undocumented family, three children, one infant, no running water for lack of payment
  - Breakthrough through General Benefits Act (Wet Werk en Bijstand)

## Background (continued)

- 2008 landmark cases:
  - Case A2: family with two young children from Afghanistan
  - Case K: young adult from Sierra Leone
  - The municipalities refused to help
  - Central Appeals Council decided in favour of A and K:
    - Only when the suffering is a very severe violation of article 8 ECHR
    - Only those migrants who have in some way have some lawful residence in the Netherlands.
- Result:
  - Cases of vulnerable migrants won (2010 cases)
  - All other cases lost
  - Need for guidance of European Committee on Social Rights

## So-called “guidance project”

- Three collective complaints:
  - 47/2008 (DCI v The Netherlands): a child is a child and foremost a child. All children should be protected
  - 86/2012 (FEANTSA v The Netherlands): no selection criteria allowed (need is decisive criterion)
  - 90/2012 (CEC v The Netherlands): (all) people are vulnerable if they have no place to stay.
- Result (then):
  - immediate measures 25 October 2013.
  - Churches took a stand. Amnesty, HRW, College Rechten van de Mens (NL Human Rights Council), UN Special Rapporteur. Squatters.
  - With this the political battle started It became a political issue

# Political debate?



OPPOSITIE MAAKT GEHAKT  
VAN BED-BAD-BROOD-AKKOORD



**BED BAD  
BROOD...**  
...STOEP DRUP  
KRUMEL





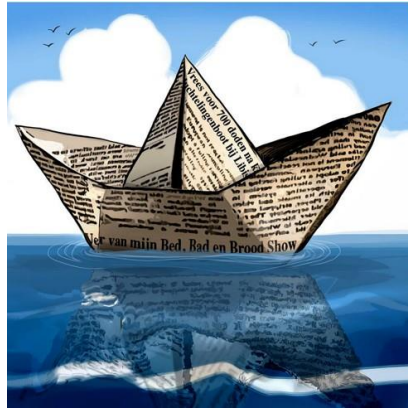
# Political debate?

#Bed #Bad #Brood



Ari

Who's bad?



Fischer  
Advocaten

sociaal economische  
rechten

# Political debate?



Bas van der Schot



Zeur & Zanik

*zouden zich van schaamte  
in hun graf omsdraaien  
als ze daar al in lagen*



w.g. fischer  
j. sprakel



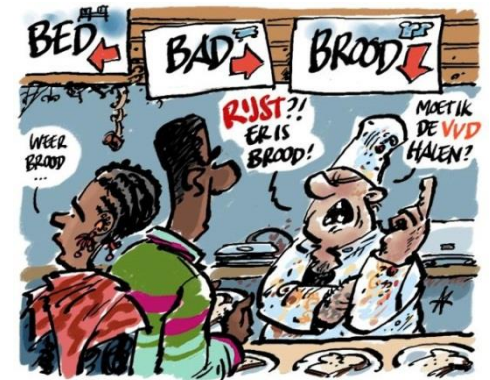
# Fischer Advocaten

sociaal economische  
rechten

# Political debate?



## Het Oudhollandsch gezelschapsspel 'Bed, bad, brood'



w.g. fischer  
j. sprakel

# Outcome?

**FOKKE & SUKKE**  
VINDEN HET WEL EEN HEEL SOBER BELEID



## Some results after the immediate measures...

- December 17, 2014:
  - Central Appeals Council: 11 judgments
  - Everyone is at least entitled to food (bread), sanitation (bath) and a place to sleep during the night (bed)
- CoE Committee of Ministers resolution of April 15, 2015
  - Vague (and very political) resolution
- Crisis within the government with political solution
  - Government letter to Dutch Parliament of April 22, 2015: “it is up to the courts to decide”.

## Developments after 2015

- Movement on all fronts:
  - 47/2008: Family (return) shelters (not for Dutch children) with guaranteed access. For Dutch children regular access (through court)
  - 86/2012: nation-wide access, less entry requirements
  - 90/2013: (return) facilities for adults (VBL = government) or fitting shelter based on need (medical, psychological) (= Courts)
- For irregular migrants however...
  - Two high courts (Council of State and Central Appeals Council) sit together: there is a (conditional) right to social assistance, but all cases concerning migrants from then on reside with Council of State (Raad van State)
  - Council of State only applies a marginal test on the requirements the State demands (willingness to leave). Only refusing assistance outright remains prohibited (“*weg, weg, weg jij*”)

## CoE / ECSR involvement

- Movement likely because of continued pressure from ECSR
- Final observation ECSR: NL has implemented the necessary changes needed on the basis of the complaints
  - Not recognized in practice
  - But conclusion could be drawn on the basis of activities of the State (moving in the right direction)
  - Compare *Hunde v Netherland*: no violation of Art 3 because the State is “en route” to a solution (*i.e.* not inactive) (<https://hudoc.echr.coe.int/eng?i=001-165569>)
- So the ECSR Observation “all is well” resulted in a drawback

## Thus...

- The current situation is similar to before complaints were submitted (*or worse*):
  - Children (*DCI v. Netherlands*)
    - Parents are responsible, State does not have to help, parents should have prepared their return better (or should have stayed put)
  - Access to shelter (*FEANTSA v. Netherlands*)
    - Regional connection is back (as are other access criteria). Not “just” for shelter, also for accessing social housing (i.e. affordable rent). Courts: placement on waiting list is sufficient.
  - Undocumented migrants (*CEC v. Netherlands*)
    - Courts: VBL (return facility) is sufficient in ALL cases (including special needs), no more individual test.
    - Government: VBL only for 12 weeks organizing return. Municipal help will no longer be funded.



## And so...

- **ACTION IS NEEDED**
- ECSR should continue monitoring
  - Asking the NL government whether they are still in compliance
  - Asking NGOs whether they think the NL government is still in compliance (if ever)
  - Making a house call...

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Questions?

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