EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

28 February 2014

Case Doc No. 7

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

FURTHER RESPONSE OF THE GOVERNMENT

Registered at the Secretariat on 30 January 2014

Ministry of Foreign Affairs

European Committee of Social Rights
Att. Mr Régis Brillat
Executive Secretary
Council of Europe

Legal Affairs Department
International Law division

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By e-transmission only

Date 30 January 2014
Re Complaint No. 90/2013
Conference of European Churches (CEC) v. the Netherlands

Dear Mr Brillat,

Further to your letter of 3 December 2013 concerning the above complaint, I have the honour to submit the following in response to CEC's reply of 13 November 2013 to the Government's observations of 27 September 2013, and to supplement those observations.

The Government notes with some concern that in its reply CEC not only contests the Government's opinion on the legal issues at hand, as may be expected in the context of the present proceedings, but also sheds doubt on the Government's reliability in outlining the situation in the Netherlands. Be that as it may, the Government wishes to express its full willingness to answer any further questions the Committee may have on both law and practice.

While noting CEC's view that the Government has not responded to its main complaint – formulated as violations of the right to life and human dignity – the Government would state that it explained in its observations that there have been no such violations given the facilities that are available. The Government would also point out again that the Charter does not grant any rights to aliens who are not lawful residents of the country concerned. The Government is struck by the absence of any response from CEC to one of its main counterarguments, i.e. the personal responsibility of those individuals whose interests CEC seeks to defend.

In several instances CEC refers to the potentially fatal consequences of the policy pursued by the Government. The Government submits that this is a blatant misrepresentation of the actual situation in the Netherlands, if only because necessary medical treatment is specifically excluded from the scope of the Benefit Entitlement (Residence Status) Act (*Koppelingswet*) and therefore remains available under all circumstances.

On 28 November 2013 the Government responded to the report by the National Ombudsman referred to in CEC's letter. The Government believes that healthcare arrangements for foreign nationals are generally good, regardless of their residence status. For instance, section 122a of the Healthcare Insurance Act (*Zorgverzekeringswet*) makes provision for financial reimbursement to be given to healthcare providers where persons residing in the country illegally, including rejected asylum seekers and other uninsurable foreign nationals, are unable to pay for their healthcare. This means that there is no financial obstacle preventing

aliens from gaining access to healthcare. CEC's conclusion that the lack of shelter for rejected asylum seekers forms an obstacle to access to healthcare is therefore incorrect. Nevertheless, the Government is aware that it can be difficult for rejected asylum seekers to obtain medical care. This, however, is much more closely related to cultural differences and the different expectations that many foreigners in the Netherlands (including rejected asylum seekers) have of healthcare providers.

The Government attaches paramount importance to respect for the human dignity of all individuals without distinction. Respect for human dignity is unconditional; however, the same does not apply to the possibility of residing in the Netherlands. The Government offers aliens who are under an obligation to leave the country the option of temporary shelter and support, both of a financial nature and in kind. This support is available both before and after these aliens return to their countries of origin. This strikes a good balance between the interests of aliens residing in the country illegally and the importance of an effective immigration policy.

In its reply CEC refers to a large group of individuals – without giving any specific details of how big the group is – who it says are excluded from facilities despite being entitled to reside lawfully in the Netherlands. In this context it should first be noted that a distinction is drawn in immigration policy between asylum applications and regular applications, a distinction which is also relevant to access to reception facilities. If an alien is residing lawfully in the Netherlands pursuant to an asylum application, he is entitled to access to reception facilities. No such right exists for those who submit regular applications. For instance, when an application is submitted for family reunification, the family member of the alien concerned may be expected to arrange for accommodation. This is underlined by the general principle that regular application procedures must be initiated from abroad, starting with an application for an authorisation for temporary stay (*machtiging tot voorlopig verblijf*).

CEC's claim that asylum seekers who submit a second or further application have no access to reception facilities also requires qualification. An alien who has made known his intention to submit a second or further asylum application will be given access to reception facilities from the time that he submits that application in person. With respect to CEC's reference to aliens who cannot be returned as a result of the principle of non-refoulement, the Government would note that these are often asylum seekers with respect to whom there are indications of involvement in war crimes. For the sake of Dutch public policy, international relations and the protection of victims, the Netherlands has no desire to become a refuge for suspected war criminals and human rights violators.

CEC provides little or no substantiation for its assertion that the Government provided inaccurate information to the Committee on four points. The Government will therefore address only those comments that have been substantiated to some extent.

CEC questions whether the description of the cold-weather rule (*vorstcoulanceregeling*) in paragraph 21 of the Government's observations is based on accurate information. The Government would note that this rule was described in a letter to the House of Representatives dated 15 December 2010 (House of Representatives, 2010–2011, 19 637, no. 1386) and has been discussed repeatedly in the House. No incorrect information has been provided. The essence of the cold-weather rule is that people will not be left on the streets

in freezing temperatures. The number of aliens (23) cited in the letter from the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers*; COA) dated 21 October 2013, a copy of which was enclosed with CEC's reply, refers only to the number of aliens not removed from reception facilities on the basis of this rule. The comparison with the figures from the study by the Research and Documentation Centre of the Ministry of Security and Justice (*Wetenschappelijk Onderzoek- en Documentatiecentrum*; WODC) is inaccurate and misleading, since municipalities also have their own cold-weather rules and are responsible for providing shelter to people without accommodation during periods of freezing temperatures. The number of aliens to whom shelter is provided in this context is not mentioned in the COA's letter.

CEC's observation that a moratorium on expulsions applies only to Tibetans with Chinese nationality is correct. The Government had assumed that the complaint concerned this group, since the complaint refers to the impossibility of returning the individuals concerned to China. The Government would note once more that this group is unknown to the Government and that contact can be made with the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*; DT&V).

Further to paragraph 22 of its observations, the Government would note that improvements have now been made to the procedure for qualifying for access to reception facilities pending a decision on an application for admission on medical grounds (House of Representatives, 2013–2014, 19 637, no. 1750). For instance, an alien who is permitted to await the decision on his objection to, or application for review of, a negative decision by the Immigration and Naturalisation Service on an application for admission on medical grounds will now also have access to reception facilities.

The Government is always seeking solutions to the problem of aliens living on the streets that fit within existing policy frameworks and are tailored to the circumstances. For example, the municipality of Amsterdam was permitted to use a former custodial institution on a temporary basis as a winter shelter for homeless people. The municipality then decided to use this building for six months to provide emergency shelter ('bed, bath and bread') for the group of aliens who had been staying in the so-called *Vluchtkerk* (St. Joseph's Church in Amsterdam) and later moved to the *Vluchtflat* (an empty office building in Amsterdam). Within this six-month period, the aliens will have to find ways to resolve their own situations with the assistance of volunteers and professionals, including staff from the DT&V and NGOs. In principle, this will mean working towards returning to their countries of origin. This is an example of a solution that is tailored to an unusual local set of circumstances while still reflecting the general principles of immigration policy.

Yours sincerely,

Roeland Böcker
Agent of the Government of the Netherlands