



Our ref: GENSEC-2013-137

Secretariat of the European Social Charter
Directorate General of Human Rights
DG II
Council of Europe
67075 Strasbourg Cedex
France

Geneva, 13 November 2013

Re: collective complaint No. 90 / 2013

Conference of European Churches v The Netherlands

Dear Sir / Madam,

1. *Introduction*

In its observations on the merits of September 27, 2013 the State argues that the problems raised in the complaint are resolved in migration policy. In response CEC argues that, firstly, the complaint is not about the migration policy of the Netherlands, secondly, the State does not respond to the main issue being preservation of human dignity, and finally the State presents facts that do not correspond to the findings of its own administration.

2. *Migration policy*

The State argues that all grounds of the complaint are resolved in the Netherlands migration policy. As long as there are persons residing in the Netherlands, who in fact have no access to basic human needs, this statement does not correspond to reality.

Although human rights problems arise from border control, this complaint is not about the restrictive migration policy of the Netherlands. It is a well-established principle of international law that it is up to the State to decide who is admitted into the country. Therefore CEC does not argue that undocumented migrants should have the same rights as citizens. The complaint is about what is necessary to survive and whether the State has a

responsibility when the survival of an undocumented migrant is at stake. CEC argues that without food, shelter and drinking water, a person dies. Those minimum provisions should be accessible to all, regardless of their legal status. Unlike the observations of the State suggest, such minimum provisions have no effect on the residence status of the migrant.

The State argues that whether help should be provided or not depends on the willingness of the migrant to leave. The question whether a migrant is unwilling or unable to leave is relevant in the resident permit procedure, it should however be of no consequence in relation to the right to life and human dignity. The position of CEC is that there is no reasonable relationship between the cooperation of the migrant and denying the migrant basic amenities. CEC argues that basic human needs should be met unconditionally. This follows from the unconditional right to life and human dignity. No exceptions are to be made when the right to life or human dignity is at stake.

The government has integrated social benefits entitlement with the migration law. The denial of shelter and food is directly linked to the alleged refusal to leave the country. The denial of basic human needs is therefore used to enforce migration policy. In the opinion of CEC, denying access to basic human needs – shelter, food and clothing – is never justly used in achieving any policy goal. However legitimate the goal may be, it is disproportionate in light of what is at stake for the migrant concerned: human dignity and life.

Furthermore, CEC observes that there is also a large group of migrants that are entitled to stay in the Netherlands, but due to their status are excluded from basic human needs. Examples include migrants who submit a second asylum request, migrants who request a permit to stay with family, migrants who according to the government cannot be expelled because of the State's obligations on the basis of article 3 ECHR, and many more. The State has failed to discuss the situation of these groups in their observations.

3. *Human Dignity*

In its observations the State focuses on the justification of exclusion of undocumented migrants and denial of their basic human needs. The State argues that this exclusion falls within the sphere of influence of the migrant by emphasizing the personal responsibility of the migrant. The State therefore argues that the risk of living in inhuman and sometimes life threatening conditions lies solely with the migrant concerned. Only a minimum of human empathy is needed to understand that without food, water and shelter a person dies.

Recently, the National "Ombudsman" has conducted a research, in which he concludes that undocumented migrants, due to a lack of shelter, have an increased difficulty in obtaining medical treatment, often to the detriment of their health.¹ The study, thus, shows that shelter is the primary facility in order to safeguard health and the human dignity of migrants.

The opinion that every person admitted or not, has a right to food, water and shelter is broadly shared within the Netherlands. A number of municipalities subsidize private

¹ Ombudsman Report 2013/125, http://www.nationaleombudsman.nl/sites/default/files/2013-125_rapport_medische_zorg_vreemdelingen_webversie_0.pdf

organizations that help undocumented migrants. One municipality has even introduced a “medical meal”; a meal offered out of medical necessity.

CEC is surprised that the State in its observations does not respond to the main complaint, being that the right to life and human dignity are at stake. Even more so because the State admits the fact that undocumented migrants are in fact excluded from basic human needs. This admitted fact makes it incumbent on the State to monitor whether these migrants are living in human dignity. Instead, the State denies their existence, which is shown in the next paragraphs.

4. *Contested Facts*

Although some municipalities, churches and individuals do in fact help undocumented migrants, no entitlement to this help exists and help is often only provided to especially vulnerable persons. Others are less lucky and end up at the mercy of private persons who offer a bed and a meal. This puts these vulnerable persons at risk of being asked “favours they can’t refuse”, sexual or others. It is up to the State to protect persons within their territory from the risk of slavery or servitude that arises from the prohibition to work lawfully and the refusal of help. It is a frightful situation to live on the streets knowing there is no place to use the rest-room, wash, eat and rest. Not knowing where to sleep or how to provide for food.

The State argues that under certain circumstances basic human needs are provided. Thus implicating that access to basic human needs is made conditional. Although it is true that there are cases where undocumented migrants are provided with food and shelter, this is not the norm. Many more are not offered basic human needs.

In its observations the State on four occasions informs the Committee incorrectly on the availability of basic human needs for undocumented migrants. In the paragraph 18 the State submits that in highly exceptional circumstances continued access to reception facilities can be provided. In the paragraph 21 the State submits that shelter is provided in case of cold-weather. In the paragraph 22 the State submits that access to reception facilities is granted in cases of medical need. In the paragraph 32 the State submits that a moratorium has been introduced on decisions and expulsions of Tibetan asylum seekers.

CEC has taken note of this position of the State. It has, however, also noted that this does not correspond to the practice as observed by the Dutch member organization of CEC working with undocumented migrants. This observation has resulted in a formal request for information (Wob-verzoek) to the government. The response to that request differs from what has been communicated to the Committee. The letter of October 21, 2013 is annexed to this response (Dutch only).

In the letter the government states that no information is available in relation to the migrants mentioned in paragraphs 18 and 22. According to the letter a number of 23 migrants have been provided shelter because of cold-weather conditions. This number needs to be viewed in light of two facts. Firstly, the Netherlands has, according to the government research centre WODC, between 60.000 and 133.000 undocumented migrants. Secondly, during the period concerned (December 23, 2011 – September 12, 2013) there have been around 50 days with temperatures below 0 degrees Celsius. In both cases, no data available and “only” 23 migrants

provided with shelter, CEC questions whether the submissions of the government are sufficiently supported by data.

The State's observation on the moratorium on Tibetan asylum seekers is only in part correct. When the government suspects a Tibetan asylum seeker not to originate from China, the moratorium does not apply, leaving the migrants to live in inhuman circumstances.

5. *Conclusion*

In 2008 the status quo in the Netherlands was that undocumented migrants, including their children, could be excluded from society and left to fend for themselves. After the Decision on the Merits in the Collective Complaint of Defense for Children International v. the Netherlands (Complaint 47/2008) common sense has shifted to have "no child lives in the streets". Government practice has followed. The current complaint is to extend the same protection to undocumented migrants who, by virtue of their undocumented existence, are similarly vulnerable.

Yours sincerely,



Rev. Dr Guy Liagre
General Secretary