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

6 May 2013

Case document No. 2

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

**OBSERVATIONS FROM THE GOVERNMENT
ON THE ADMISSIBILITY**

Registered at the Secretariat on 3 May 2013

Ministry of Foreign Affairs

Mr Régis Brillat
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Date 3 May 2013
Re Conference of European Churches (CEC) v. the Netherlands
Complaint No. 90/2013

Dear Mr Brillat,

Further to your letter of 22 March 2013 concerning the above complaint, I have the honour, on behalf of the Government of the Netherlands, to inform you as follows.

The applicant organisation ('CEC') invokes the right of undocumented adults to social and medical assistance (article 13 § 4 of the European Social Charter) as well as their right to shelter (article 31 § 2 of the Charter). However, paragraph 1 of the Appendix to the Charter explicitly restricts the scope of those articles to foreigners only in so far as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Party concerned. This provision is unambiguous and can, in the Government's view, only lead to the conclusion that persons not residing lawfully in the Netherlands do not fall under the scope of the articles of the Charter that are expressly listed in that provision.

In addition and more specifically, article 13 § 4 of the Charter, upon which CEC relies, extends the scope of the previous paragraphs of that article to nationals of other Parties lawfully within the territories of the Parties, and thus explicitly singles out persons not lawfully present within those territories. With respect to article 13 therefore, the Charter contains a dual confirmation that the Contracting Parties intended to restrict the scope of that provision.

The Government is of course well aware of the fact that the Committee has held, notably in its decision of 20 October 2009 in the case of *Defence for Children International v. the Netherlands* (Complaint No. 47/2008), that paragraph 1 of the Appendix to the Charter does not exclude minors unlawfully residing in the territories of the Parties to the protection of the Charter. The present case, however, concerns not minors – a group which is by definition considered vulnerable, hence the attribution of specific rights under the Convention on the Rights of the Child which adults do not enjoy – but a more diffuse group of persons whose common denominator includes the fact that they are residing

unlawfully in the Netherlands, but not necessarily the origin of that status, or any other common background.

Extending the Committee's reasoning in the DCI case to the present case would once more render paragraph 1 of the Appendix to the Charter futile and raise the question of whether any meaning is left at all. That question is all the more pertinent in the light of the letter of 13 July 2011 from the President of the Committee to the States Parties to the Charter, a copy of which is herewith enclosed together with its appendix. This letter argues against the desirability of maintaining the restriction laid down in paragraph 1 of the Appendix to the Charter, since '*such a limitation is hardly consistent with the nature of the Charter*'. The President then invites States Parties to make a declaration extending the personal scope of the rights enshrined in the Charter.

Date
3 May 2013

In a letter of 14 October 2011 from the Director of the Europe Department of the Ministry of Foreign Affairs, which is also enclosed, the President was informed that the Government could not accept the proposal to abolish the limitations on the personal scope of the Charter as specified in paragraph 1 of the Appendix. For the arguments underlying this position, I refer you to the Director's letter.

Be that as it may, if this correspondence shows anything it is the fact that paragraph 1 of the Appendix still has a real meaning and was not intended to be tailored to the nature or seriousness of the complaint. If the provision were open to interpretation in the manner proposed by CEC, the question would arise as to why it is 'hardly consistent with the nature of the Charter' and why states should be encouraged to abolish it.

In this regard, I should also draw attention to the President's recognition that '*States Parties seem already inclined, and conscious of their duty, to apply social rights beyond the limited personal scope indicated in the Appendix*'. From this it may be concluded that states recognise certain rights *without* there being a basis for such recognition in the Charter, which is further proof that the Charter *itself* is not applicable.

In conclusion, the Government is of the opinion that the complaint should be declared inadmissible *ratione personæ*, since the group of persons to whom the complaint relates are not covered by the scope of the relevant articles of the Charter.

I look forward to the Committee's decision in this respect.

Yours sincerely,



Roeland Böcker
Agent for the Government of the Netherlands