European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION
ON IMMEDIATE MEASURES

25 October 2013

Conference of European Churches (CEC) v. the Netherlands

Complaint No. 90/2013

The European Committee of Social Rights ("the Committee"), committee of independent experts established under Article 25 of the European Social Charter ("the Charter"); during its 267th session,

Having regard to the request for immediate measures registered on 20 June 2013 and submitted by the Conference of European Churches ("the CEC"), asking the Committee, primarily "to invite the Dutch authorities to suspend the operation of the Linkage Act with regard to shelter, food and clothing for all persons currently excluded through the Linkage Act, so as to prevent further harm and safeguard health and life", and alternatively to suspend the operation of several provisions of domestic law (in particular, Article 16.2 of the Employment and Social Assistance Act as well as Article 8.1 of the Social Support Act) "to such an extent that undocumented migrants have access to shelter, food and clothing in order to safeguard their human dignity and prevent further harm";

Having regard to the response of the Government of the Netherlands ("the Government"), dated 2 September 2013, where the Government objects to this request, firstly, on grounds of the "potentially far-reaching consequences" of adopting general measures connected with the "nature of the collective right of complaint"; secondly, the constitutional impact deriving from a suspension of an Act of Parliament; thirdly, the fact that the existence of a possible irreparable harm is what the parties disagree on and, therefore, immediate measures could not be adopted before considering the merits of the complaint; as well as, finally, since the request goes beyond the boundaries of the Charter, as it seeks a measure on behalf of persons not covered by the provisions of the Charter;

Having regard to the decision on the admissibility of the complaint adopted by the Committee on 1 July 2013;

Having regard to the Charter and to the Rules of the Committee ("the Rules"), in particular to Rule 36, which reads as follows:

> **Rule 36 – Immediate measures**
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> 1. Since the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter.
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> 2. In case of a request of immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.
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> 3. The Committee's decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. The Committee may request information from the respondent State on the implementation of the indicated measures."

Having deliberated on 22, 24 and 25 October 2013;

Delivers the following decision, adopted on the latter date:

1. The Committee underlines the exceptional character of immediate measures, the adoption of which must appear "necessary with a view to avoiding the risk of a serious and irreparable injury and to ensuring the effective respect for the rights recognized in the European Social Charter" (Rule 36§1), insofar as "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, § 32).

2. In light of Rule 36, it considers that the persons concerned by the complaint evidently find themselves at risk of serious irreparable harm to their lives and their integrity when being excluded from access to shelter, food and clothing.

3. Assessing the information at its disposal, the Committee considers that the requested measure on the suspension of the Linkage Act *in toto* or of two specific provisions (of the Employment and Social Assistance Act and the Social Support Act) must be rejected. It notes that in light of the information provided on the Dutch situation in connection to the Complaint No. 86/2012, it is possible to find solutions in order to not exclude irregular migrants from access to facilities relevant to the fulfillment of their basic needs (shelter, clothing and food).

4. In this context, the Committee considers it necessary to indicate immediate measures.

5. For these reasons, the Committee,

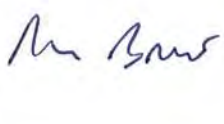
INVITES THE RESPONDENT GOVERNMENT TO TAKE THE IMMEDIATE MEASURES INDICATED BELOW:

- Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter, clothes and food) are met; and

- Ensure that all the relevant public authorities are made aware of this decision.

Requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision and to publish the decision on the Internet site of the Council of Europe.





Luis JIMENA QUESADA
President and Rapporteur

Régis BRILLAT
Executive Secretary