

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human rights of migrants

REFERENCE: OL
OTH 2/2015:

12 February 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 25/17, 26/3, and 26/19.

We are writing to you with respect to two decisions from July 2014 of the European Committee of Social Rights (“ECSR”) in the cases of the *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands* and the *Conference of European Churches (CEC) v. the Netherlands*. In these cases, the ECSR found that the Netherlands violated various provisions of the European Social Charter (“Charter”) by failing to provide adequate access to emergency assistance to various groups in need of such assistance, including adult migrants in an irregular situation. It also held that the Netherlands violated its obligation to prevent and reduce homelessness with a view to its gradual elimination. We understand that the Committee of Ministers is currently considering these decisions pursuant to article 9, paragraph 1 of the *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*.

In December 2014, we raised with the Government of the Netherlands our concern with respect to its longstanding refusal to provide emergency assistance for homeless migrants in an irregular situation, including provision of food, clothing, emergency shelter and adequate housing alternatives. Given the gravity of the situation, we also made public our concern.¹ We indicated to the Government our agreement with the above-mentioned decisions by the ECSR and that its refusal to provide emergency assistance to this group suggests a *prima facie* violation of the right of everyone to an adequate standard of living, including adequate food, clothing and housing, enshrined in article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15425&LangID=E>

Rights (“ICESCR”). We underlined that the right to an adequate standard of living applies to anyone, regardless of legal status and documentation,² as has also been the position of the Committee on Economic, Social and Cultural Rights as well as the Commissioner for Human Rights of the Council of Europe.³

On 20 January 2015, the Government of the Netherlands announced that it will provide funding to municipalities that offer emergency shelters for homeless irregular migrants to assist these municipalities in meeting their obligations towards this group. While we welcomed this significant change of position,⁴ the Government has also indicated that it will not take a final decision on the form and amount of financial assistance to municipalities until the Committee of Ministers has adopted a position in the above-mentioned cases. In light of the significance of the position of the Committee of Ministers for the future access to emergency assistance for homeless irregular migrants in the Netherlands, we want to take this opportunity to address you directly about this matter.

We urge the Committee of Ministers to adopt a recommendation in the above-mentioned cases that endorses the ECSR’s decisions and that requests the Netherlands to take immediate steps to bring the situation in the country into full conformity with the Charter. We specifically urge the Committee of Ministers to embrace the ECSR’s position, which is based on its established case-law, that the provisions of the Charter may be applied to migrants in an irregular situation. It is important in that regard that the Committee of Ministers “cannot reverse the legal assessment” made by the ECSR.⁵ We further recall the Committee of Ministers’ resolution of 7 July 2010 on *Collective complaint No. 47/2008 by Defence for Children International (DCI) against the Netherlands*, which emphasized that the scope of the Charter in terms of persons protected does not relieve States “...from their responsibility to prevent homelessness of persons unlawfully present in their jurisdiction”.⁶ We believe that any other interpretation would be inconsistent with applicable international law, would constitute a reversal of the Committee’s legal assessment, and would have potentially enormous significance far beyond these particular cases.

We hope that our views are helpful to the Committee of Ministers in its deliberation concerning the above-mentioned decisions by the ECSR. We would further like to inform you that this letter and any possible replies of the Committee of Ministers will be made available in a report to be presented to the Human Rights Council for its consideration.

² See also general comment No. 30 (2004) of the Committee on the Elimination of All Forms of Racial Discrimination on non-citizens.

³ Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, para. 30; Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, 14 October 2014, CommDH(2014)18.

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15519&LangID=E>

⁵ Additional Protocol to the European Social Charter providing for a system of collective complaints, paragraph 46.

⁶ Resolution CM/ResChS (2010) 6, paragraph 2

Thank you for your consideration and we stand available to further engage with you on this matter.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

François Crépeau
Special Rapporteur on the human rights of migrants