

## NEWS LETTER, VOLUME 3 NR 14

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### COMPLAINT CONCERNING ENTITLEMENT TO HOUSING AND FOOD ADMISSIBLE

Last week two complaints against the Netherlands at the European Commission for Social Rights (ECSR) have been declared to be admissible.

The complaint of the **Conference of European Churches (CEC) against the Netherlands** (complaint 90/2013) pertains to the question whether the Netherlands is violating the European Charter because she does not provide food, clothing and shelter to people who need this (based on the principle of the Benefit Entitlement (Residence Status) Act). One of the examples mentioned in the complaint is the group of the Vluchtkerk (refugee church, currently the Vluchtflat, refugee flat).

The complaint will be dealt with in more detail; after the summer we expect to know more

[http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC90CaseDoc1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC90CaseDoc1_en.pdf).

The ECSR has also declared admissible the complaint of the **European Federation of National Organisations working with the Homeless (FEANTSA) v The Netherlands** (86/2012). This complaint pertains to the way in which the Netherlands deals with housing and shelter of homeless people

[http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC86CaseDoc1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC86CaseDoc1_en.pdf).

## 1. BASIC RIGHTS

### Pilot study Assistance Benefit EU citizens in Rotterdam

Recently the Central Court of Appeal have decided that EU citizens are entitled to Assistance Benefit and that the IND cannot rule about the right of residence until this Assistance Benefit has been granted.

As of 1 January 2015 the government want to reverse the order: first the municipality should inform the IND in case EU citizens have applied for Assistance Benefit. As of October a pilot study will be launched in Rotterdam, in which this rule will already be applied.

### Council of State: no Health Care Benefit in case of resident mother without right of residence

In accordance with the Netherlands Law on supplementary benefits migrants are not entitled to supplementary benefits if an undocumented person lives at the same address. This ruling still applies if she is the mother of the family according to the Council of State <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2013:CA0142>.

### Sweden: health care for undocumented people as of 1 July

The Swedish Government introduced [reforms](#) to the health care system. The reform grants access to health care, including ordinary care, to undocumented children under the age of 18 and grants access to health care “that cannot be postponed”, including dental care, maternity care, contraceptive counselling and sexual and reproductive care to all undocumented migrants.

In addition, the new reform stipulates that county councils would be able to offer undocumented migrants the same level of care that is available to residents.

## 2. ADMISSION POLICY

### Council of State: asylum request will no longer be handled after an entry ban has been issued

Aliens with an entry ban cannot have legal residence. Therefore both applications for a residence permit and asylum requests are futile. The Council of State are of the opinion that the request does not need to be handled <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2013:298>.

### Court of Justice EU: homosexuality can be persecution ground

The Netherlands have asked the Court of Justice for advice with respect to the decision about asylum requests by homosexuals. The Court have replied that homosexuality can indeed be a persecution ground, that homosexuals do not need to exercise restraint and that the actual persecution should be taken into account, rather than the law

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:217:0007:0008:EN:PDF>.

### Decision and departure moratorium Tutsis from Eastern Congo

The secretary of state has decided that the risk for Tutsis from East Congo is too great when they should return. During the year to come he will make decisions as to their asylum requests. They are entitled to shelter and support. Dutch Government Gazette 19603, 9.7.13

### Court of Appeal: deviating from Child's Pardon possible

The Court of Appeal has interpreted the regulation Child's Pardon in such a way that it is allowed to deviate from this regulation. In this case no Pardon will be issued because the child's mother had a criminal record. The Court of Appeal are of the opinion that the IND needs to provide a better justification as to why children can become the victims of this ruling (Court of Appeal Amsterdam, 13/13246,13/13243 en 13/13241, 11.7.13).

In many cases people who have applied for the Child's Pardon whose applications have been denied are provided with an intention to issue an entry ban with a term within which an appeal should be lodged. After investigation

of the dossier the IND can immediately dismiss the application and issue a deportation order as well as an entry ban.

Underage children will not be issued entry bans, whereas other family members may be issued such bans (Dutch Parliamentary Document 19637: 1698, 1.7.13).

### 3. CHECK AND DEPORTATION

Council of State: unaccompanied minor asylum seekers can be detained for longer than 14 days

In spite of the policy aimed at protecting minors from detention, the Council of State are of the opinion that this is still possible in special cases. This case concerned a migrant who had been in detention before and who does not co-operate in his return ABRvS 201303374/1, 27.6.13.

Secretary of State: Ghana does not yet co-operate in return, in spite of cutbacks on foreign aid

Secretary of State Teeven is dissatisfied because Ghana is unwilling to co-operate in return of her compatriots. Dutch Parliamentary Document 30573 nr. 119, 3.7.13.

Iraq does not want to co-operate in return either, because there is insufficient shelter and support for people who return.

Court of Appeal: eviction to Somalia impossible in the short run

The Court of Appeal have decided that Somali migrants cannot be placed in detention of aliens because eviction is impossible in the short run. <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBROT:2013:5160>.

### 4. WHAT CAN BE DONE?

FEANTSA: housing and health care for EU citizens

The European Federation of National Organisations Working with Homeless (FEANSTA) has published 'Homeless in Europe', a document which examines member states responses to migrants who have exercised their right to free movement but subsequently become destitute in the host state. FEANSTA also emphasizes that the denial of services is not the answer to the problem of homelessness within Europe and proposes that the only way to achieve a long-term solution is with adequate access and clarity on social policies throughout the EU.

[FEANSTA- The European Federation of National Organizations Working with Homeless](#), 05 June 2013.

Annual report Human Rights in the Netherlands 2012

The Board has noticed the following developments that require more attention:

- In order to deal with violence against women a gender-intensive approach is required. This means an approach which takes into account the causes of violence against women.
- Detention of aliens results in the violation of human rights of undocumented migrants.
- The use of fingerprints of aliens as an investigative tool is a breach of the right to a private life and stigmatises.
- The fight against human trafficking and exploitation needs to be given a higher priority and requires even more focus on prevention.

[Read the complete Rapportage Mensenrechten in Nederland \[Report Human Rights in the Netherlands\] 2012](#)

Read the new website of Beyond Borders: <http://beyondborders.nu>

Since 2003, the LOS Foundation (Dutch acronym for 'Landelijk Ongedocumenteerden Steunpunt') has been the knowledge centre for people and organizations providing assistance to undocumented migrants. LOS Foundation devotes itself to the basic rights of these migrants and their children.