

# IN SEARCH OF THE LAW: GOVERNING HOMELESS EU CITIZENS IN A STATE OF LEGAL AMBIGUITY

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# HOMELESS UNION CITIZENS AND EU LAW

1. France 2009-2010: Enforcement action against France on the expulsion of Roma from its territory was abandoned.
2. Germany 2017: eviction of (mostly EU) homeless from Tiergarten and (funded) voluntary repatriations.
3. UK: *Gunars Gureckis and others v. Secretary of State for the Home Department*: rough sleeping an 'abuse' of the right to free movement?
4. In NL: 'Pilot programme' to expel homeless Union citizens operative since 2011

# HOMELESS UNION CITIZENS AND EU LAW

## *Purpose of study:*

National responses to the legal/administrative challenge of homelessness amongst Union citizens.

## *Question:*

How do (sub)national actors engage with EU law when in/excluding homeless Union citizens or challenging their right to residence?

## *How:*

Doctrinal research and case study on Netherlands: interviews, regulations, policy documents & domestic case law

# RESEARCH PAPER ON SSRN.COM



## **The Amsterdam Centre for Contemporary European Studies**

SSRN Research Paper 2017/04

'In Search of the Law': Governing Homeless EU Citizens in a  
State of Legal Ambiguity

# HOMELESS UNION CITIZENS IN EU PROJECT

Sociological position in EU integration project:

1. *The 'stranded' Union citizen*: signifies purposive character of free movement (as economic instrumentalism)
2. *Aspirational solidarity*: EU provides possibility to explore life opportunities beyond economic exchange: search for 'good life', which might be 'the other place', also for homeless lifestyles

# HOMELESS UNION CITIZENS IN EU LAW

'Homeless' in the EU legal framework:

1. Worker: 'Effective and genuine activities' (*C-14/09, Genc*)
2. Earned social citizenship (art. 7.3 & 16 of Dir. 2004/38)
  1. 1 year of work
  2. 5 years of 'lawful' residence
3. Other situations: a 'fluid il/legality' (*Mostowska 2017*)

Depends on interpretation of article 7.1.b of Dir. 2004/38:

1. *Consequential relationship*: the 'unreasonable burden' and catch-22?
2. *Independent verification* of compliance with conditions?

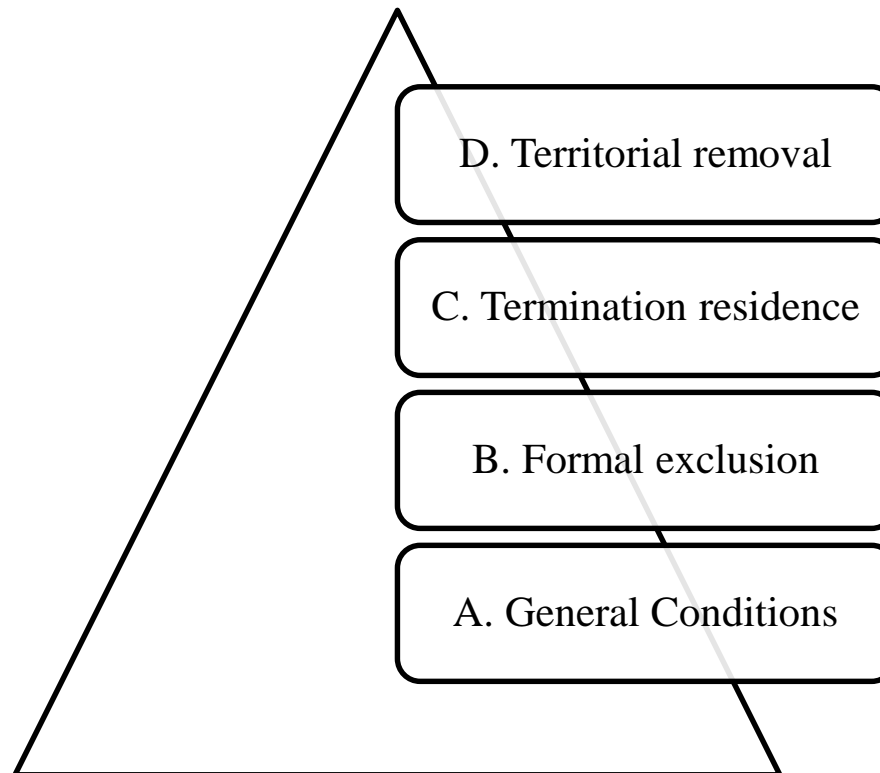
# POLICY PROCESS IN NL: 'FINDING THE LAW'

Policy official municipality of Rotterdam, January 2016

1. a *'foolish, crazy search'* of EU citizens' entitlements

2. *"I remember very well that when reading directive 2004/38 how terribly uncertain we were about which entitlements could be derived from European law. One had to treat Union citizens non-discriminatory and equally to Dutch nationals, but they also had to comply with the conditions to residence, but we were not allowed to verify these...."*

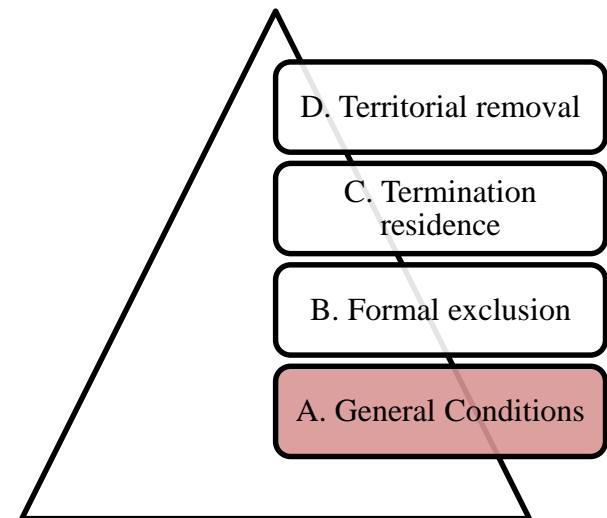
# LEGISLATIVE CHANGE AND POLICY INITIATIVES





# 1. GENERAL CONDITIONS

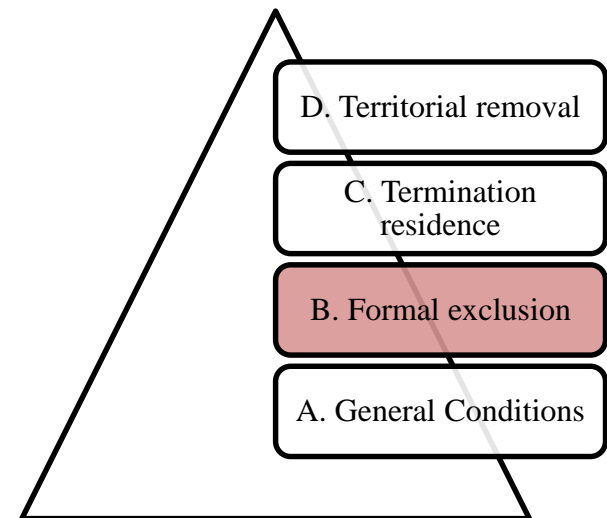
1. Nationality/lawful residence
2. Target group (need/health/self-supportive, etc)
3. 'Local connection': 2 out of 3 rule (registration)



## 2. FORMAL EXCLUSION (2012)

### Specific exception in Social Support Act:

Every lawfully residing 'alien', except for Union citizens mentioned in Article 24 (2) Directive 2004/38 (first three months/jobseekers)

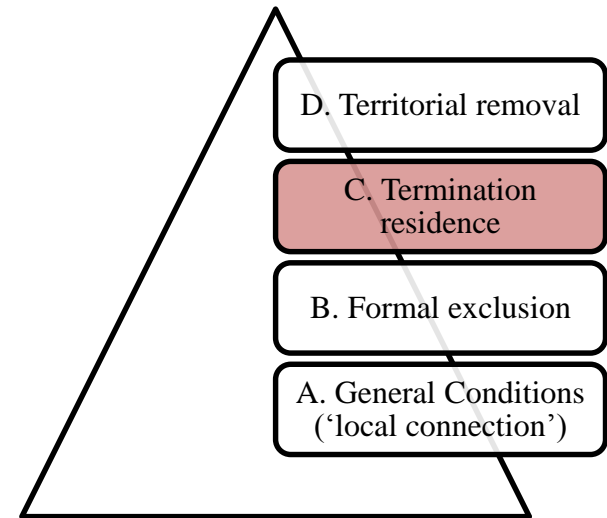


# 3. LOSS OF RESIDENCE (SINCE 2011)

| <i>Residence</i>     | <i>More than supplementary</i> | <i>Supplementary</i>                  | <i>Shelter</i>                   |
|----------------------|--------------------------------|---------------------------------------|----------------------------------|
| < 2 years            | Any recourse                   | Any recourse                          | 8 nights                         |
| > 2 year             | 2 months or more               | 3 months or more                      | 16 nights                        |
| > 3 years            | 4 months or more               | 6 months or more                      | 32 nights                        |
| > 4 years            | 6 months or more               | 9 months or more                      | 64 nights                        |
| <i>Entire period</i> | During subsequent years        | 15 months within 3 years of residence | During subsequent years 8 nights |

Termination of residence for being an **'unreasonable' burden** on the social assistance system.

Operationalised through 'sliding scale' including reliance on shelter since 2011



# 4. DIRECT REMOVAL MEASURES (SINCE LATE 2011)

## 'Pilot nuisance causing EU citizens' (basically homeless)

- Since December 2011
- Over 400 EU citizens expelled
- Actors: Immigration Authority, Aliens Police, Repatriation/Departure Service & Local authorities (police, municipality, health service, NGO's)

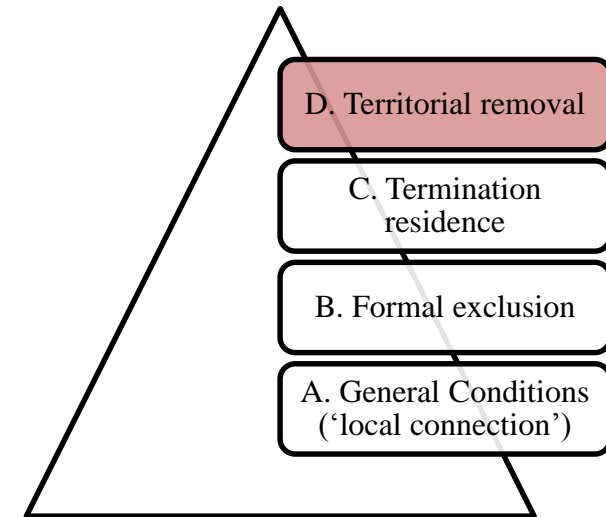
**Legal basis:** article 7 directive 2004/38

### Procedure:

1. Compilation of extensive *dossier* with 'indications' of a possible failure to comply with conditions of self-sufficiency (eg bin eating, petty crime, rough sleeping)
2. *Hearing* by police on individual circumstances and decision by immigration authority
3. Decision to leave within 28 days, otherwise forced removal (active removal policy)

**Courts** have been supportive of this *independent verification*: no consequentialist interpretation of dir. 7 (1)(b):

- 'no one can live from the air' ('van de lucht leeft immers niemand')
- Otherwise it would 'completely undermine' the positively formulated requirement to possess sufficient resources



# CONCLUSIONS: TESTING THE LAW

1. Legal ambiguity for vulnerable group: fluid il/legality of Union citizens who are both inside and outside the law
2. In a state of legal ambiguity, Dutch authorities are 'in search of law' by 'testing the limits of the law'
3. Highly pragmatic attitude to litigation: policies 'completely dependent' on jurisprudence, awaiting ECJ jurisprudence
4. Coherent structure for support, exclusion and removal of homeless Union citizens in NL