



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

3 July 2013

**FIRST REPORT  
ON THE NON-ACCEPTED PROVISIONS  
OF THE EUROPEAN SOCIAL CHARTER**

**TURKEY**

Meeting in Ankara on 6 May 2013

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## I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

As Turkey ratified the Revised Charter on 27 June 2007, the Committee contacted the Turkish authorities in 2012 with a view to apply for the first time the procedure provided by Article 22 of the 1961 Charter. It was agreed to hold a meeting between the European Committee of Social Rights and representatives of various Turkish institutions, in Ankara, on 6 May 2013. As Turkey has accepted 91 of the 98 paragraphs of the Revised Charter, the meeting covered the remaining 7 paragraphs.

Following this meeting, the European Committee of Social Rights delegation considered that acceptance seemed possible in respect of 2 provisions: Article 5 (Freedom to organise) and Article 6 (Right to collective bargaining).

In respect of the two other provisions (Article 2§3–Right to four weeks' annual holiday with pay and Article 4§1 – Right to a fair remuneration) it considered that the remaining obstacles could be superseded and the delegation invited the Turkish authorities to take every possible initiative with a view to accept these provisions.

The Committee remains at the disposal of the Turkish authorities, and encourages them study the collective complaints procedure with a view to its acceptance at a later stage.

More generally, the Committee draws the attention of the Turkish authorities to the Declaration of the Committee of Ministers on the 50<sup>th</sup> anniversary of the European Social Charter, adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies.

The next examination of the provisions not accepted by Turkey will take place in 2017.

## **II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS**

### **A Exchange of views with Mr Fatih ACAR, Undersecretary of the Ministry of Labour and Social Security:**

Before the meeting, the Delegation had an exchange of views with Mr Fatih ACAR, Undersecretary:

He confirmed the important developments related to the implementation of the RESC and, in particular, the Constitutional amendments adopted by referendum on 12 September 2012 and the adoption of Act 6356 on 18 October 2012 concerning the right to organise and the right to bargain collectively.

He considered that the decision to accept articles 5 and 6 would be a straight forward follow-up of these important changes and welcomed the idea of the meeting which should be of a technical nature in order to provide information on the last details to be sorted out before the acceptance of additional provisions.

He emphasised the willingness of the Turkish authorities to align the domestic, legal and practical situation with EU legislation.

He hoped that positive steps would be achieved soon after the meeting.

### **B Meeting on non-accepted provisions**

The programme of the meeting appears in appendix 2 and the list of participants in Appendix 3.

The meeting was chaired by Mr Erhan BATUR, Deputy Undersecretary and by Mr Ali Kemal SAYIN, Deputy Undersecretary.

#### **a Opening of the meeting**

Mr Erhan Batur, Deputy Undersecretary of the Ministry of Labour and Social Security, opened the meeting, welcoming the delegation of the Committee.

He stressed the importance of the regular contact with the Committee in 2012 and 2013, which have allowed for the organisation of the meeting and on the willingness of the Turkish authorities to fully respect their commitments under the Charter and accept, as far as possible, additional commitments.

In particular, in respect of Articles 5 and 6, he highlighted the significant constitutional and legislative changes which paved the way towards acceptance.

He nonetheless expressed concern about the fact that Turkey had been criticised by international trade union organisations about the restrictions imposed on the 1st May demonstration (no access to Taksim Square because of the current construction of the underground transport) and that the same organisation had not mentioned the fact that 1st May is now a public holiday and that the demonstration had been duly authorised in another part of Istanbul.

He referred to the recent publication of the Ministry of Labour and Social security: 'A new era in Turkish labour relations' which presents the recent constitutional and legislative changes, in particular Act 6356. In his foreword, the Minister, Faruk Celik states, inter alia, that "Collective bargaining processes and trade union rights and freedoms in the new law were rearranged so as to align with ILO Conventions and related articles of the European Social Charter".

Mr Régis Brillat, Head of Department, Executive Secretary of the European Committee of Social Rights, Council of Europe thanked Mr Batur for the comprehensive presentation.

Since Turkey became a member State of the Council of Europe in 1949 and since it ratified the 1961 Charter in 1989, it had made significant steps toward the implementation of social rights. The ratification of the Revised Charter in 2007 had been a very important step, not only in respect of Turkey, but also for the Council of Europe itself. Indeed, Turkey had accepted a very significant number of provisions of the Revised Charter: 91 paragraphs out of 98. This places Turkey among the States which have accepted the highest number of provisions.

The Council of Europe is attaching much importance to Articles 5 and 6 of the Charter because they are unique in their nature: Not only they represent rights as such (freedom to organise and right to collective bargaining), but also, they should be considered as tools in order to facilitate the implementation of all the rights which are enshrined in the Charter. Therefore, through the acceptance of Articles 5 and 6, Turkey would not only grant additional rights its people, but would improve the implementation of existing rights.

The Committee's delegation was optimistic about the situation and hoped that Turkey would soon join the other 41 States having accepted Articles 5 and 6 of the Charter.

The Council of Europe and the European Union were closely working together in the field of human rights. As far as the Social Charter is concerned, the EU legislation also covered important issues of labour law also concerned with Articles 5 and 6.

More generally, the Council of Europe was ready to enhance its cooperation with Turkey on the implementation of the Charter.

## **b Articles 5 and 6**

### Situation in Turkey

Turkey is a party to ILO Conventions 87 (1948) on Freedom of Association and Protection of the Right to Organise as well as to ILO Convention 98 (1949) on the Right to Organise and Collective Bargaining.

These two Conventions are very similar to Articles 5 and 6 of the Charter.

Indeed, after the constitutional amendments of 2010, Turkey adopted a new Act, Act 6356 of 18 October 2012. Relevant international instruments have duly been taken into consideration when preparing the new Act.

The main features of the new legislation are the following:

- The coverage of the code is extended by covering those working on freelance basis;
- The restrictions on being a founding member of a trade union, on the establishment of trade unions and composition of trade union organs are revoked;
- The procedure for establishing trade unions is simplified;
- The number of the branches of activity is re-organised in line with the international standards by reducing the branches from 28 to 20;
- The most criticised practice of public notary process, required for a new membership and withdrawal from a trade union, is repealed;
- Multiple trade union membership for the workers employed in different workplaces in the same branch of activity is allowed;
- The upper limit for union dues is left to the statute of a union;
- The maintenance of membership during temporary unemployment is permitted;
- The scope of international activities that could be conducted by trade unions is extended;
- The legal personality of a trade union is clearly separated from the individual liability of union officials;

- Financial auditing of trade unions is left to independent chartered accountants;
- Protection of freedom of association is further strengthened, and
- Determination of branch of activity is left to trade unions;
- Multi-level collective agreement via framework agreements is enabled;
- A legal framework is established for regulating group collective agreement;
- During a full or partial transfer of ownership of a workplace, the continuity of a collective labour agreement in effect is secured;
- Scope of strike ban is narrowed down;
- The restrictions on various forms of strikes, industrial actions and picketing are lifted;
- Trade union legal personality is immune from the liability for damages caused to the workplace during a strike;
- All confederations are authorised to be represented before the Higher Board of Arbitration;
- Imprisonment stipulated by the former Law for certain infringements is replaced with administrative fines.

The discussion concerned, inter alia, the limitations in respect of the police and the prohibition in respect of the armed forces.

In this respect, according to a recent decision adopted on 10 April 2013 by the Constitutional Court establishes that Turkish civil servants working for the Turkish Ministry of National Defence and the Turkish Armed Forces may establish labour unions or join unions they wish.

#### Opinion of the Committee

The delegation welcomed this information which confirmed the commitment of the Turkish authorities to implement international norms within their domestic legal system.

It welcomed the treatment of Freedom to organise as a fundamental right as it should be under the European Convention of Human Rights as well as under the European Social Charter.

In the light of the current case law of the Committee, and the current legal situation and practice, Articles 5 and 6 could be immediately accepted by Turkey.

**c Article 2§3**

Situation in Turkey:

In respect of Article 2§3 (Four weeks of paid annual leave), the technical difficulties lie in the fact that workers with 1 to 5 years of service had less than 4 weeks paid holidays but the issue was under consideration.

The current economic conditions in the country do not allow all sectors to guarantee the right to a 4 week paid annual leave for all employees.

According to Act No. 657 Civil Servants Act, which covers all civil servants who are not covered by the Labour Act of 4857, the length of annual leave is:

- 20 days for those with 1 to 10 years of service;
- 30 days for those who have more than ten years.

An additional two day leave is added to most of the employees as a travel time. Employees may be authorised to take their leave every second year.

According to Act 4857, the right to paid annual leave is:

- 14 days for those with 1-5 years of service;
- 20 days for those who are between 5-15;
- 26 days for those with more than 15 years.

However, it cannot be less than 20 days in respect of workers under the age of 18 or over the age of 50.

Employees must work at least one year before being entitled to annual paid leave.

These periods can be increased by collective agreements.

Opinion of the Committee:

The Committee considers that most of the workers concerned are correctly covered by domestic legislation relating to annual holidays with pay and it invites the Turkish authorities to continue their efforts to cover all workers as requested by Article 2§3.



**d Article 4§1**

Situation in Turkey:

In respect of Article 4§1, the right to a fair remuneration, the Turkish participants indicated a significant increase of the lowest remuneration, which would allow Turkey to accept the provision in the near future.

Act 4857 provides for the regulation of the Minimum Wage Fixing Commission.

In accordance with the Regulations, the minimum wage paid to workers should cover for food, housing, clothing, health care, transportation and culture as well as the minimum level sufficient to meet the essential needs of the cost of living.

The minimum wage is determined according to the social and economic situation in the country, the indicator of the cost of living, the actual average wages and the living conditions.

Opinion of the Committee:

The Committee welcomes the development in Turkey in respect of the issue covered by Article 4§1 and invites the Turkish authorities to pursue their efforts with a view to accept this important provision of the Charter.

### **III. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINT PROCEDURE**

Due to lack of time, this issue has not been discussed during the meeting.

The Committee's delegation intended to share the following information on the procedure with a view to Turkey's acceptance of it; this information can be found in a recent publication. The delegation also confirms its availability to exchanging views with the Turkish authorities on the issue.

#### Basis and objectives of the collective complaints procedure

The collective complaints procedure was introduced under an additional protocol to the Charter for the purpose of improving the enforcement of the rights guaranteed by the Charter. The Additional Protocol providing for a system of collective complaints – ETS No. 158 – was opened for signature by Council of Europe member States on 9 November 1995 and entered into force on 1 July 1998.

The collective complaints procedure strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the Committee for rulings on possible non-implementation of the Charter in the countries concerned.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions of the European Committee of Social Rights must be respected by the States concerned; however, they are not enforceable in the domestic legal system.

The decisions of the Committee are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law. In this connection, domestic courts can declare invalid or set aside domestic legislation if the European Committee of Social Rights has ruled that it is not in compliance with the Charter.

#### Two complementary human rights procedures at European level

The collective complaints procedure established under the Charter is a parallel protection system which complements the judicial protection provided under the European Convention on Human Rights.

Because of their collective nature, complaints may only raise questions concerning non-compliance of a State's law or practice with one of the provisions of the Charter. Individual situations may not be submitted.

The following organisations may lodge complaints:

- the European social partners: European Trade Union Confederation (ETUC), for employees; Business Europe and International Organisation of Employers (OIE), for employers;
- certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe;
- social partners at national level.

Furthermore, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. Only Finland has done so.

### Examination of complaints by the European Committee of Social Rights

The complaints are published on the Council of Europe website.

For each complaint, a member of the Committee is appointed by the President to act as Rapporteur. The Rapporteur has the task of drafting, for adoption by the Committee a draft decision on admissibility of the complaint, followed, as the case may be, by a draft decision on the merits.

### Decision on admissibility

Before the Committee decides on admissibility, the President may ask the respondent State for written information and observations, within a time limit that he or she decides, on the admissibility of the complaint.

In order to be declared admissible, a collective complaint must necessarily:

- be lodged in writing and clearly indicate the name and contact details of the complainant organisation;
- be signed by a person entitled to represent the complainant organisation and provide proof that the person submitting and signing the complaint is entitled to represent the organisation;
- if the complainant is a national trade union or a national employers' organisation, provide proof that these bodies are representative within the meaning of the collective complaints procedure; in this connection, the Committee has ruled that, for the purpose of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness;
- if the complainant is an international or national NGO, provide proof that the complainant organisation has particular competence in the field relating to the provision (or provisions) of the Charter covered by the complaint;

- be lodged against a State in which the Charter is in force and which has accepted the system of collective complaints; as of 1 March 2013, the States having accepted the Additional Protocol providing for a system of collective complaints were as follows: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden;
- concern one or more provisions of the Charter, possibly in combination, accepted by the State concerned; in principle, the Charter provisions in respect of which complaints may be lodged;– indicate the extent to which the State has failed to implement the Charter. In particular, the complaint must indicate the point(s) in respect of which the State in question has allegedly failed to comply with the Charter or implemented it inadequately, along with evidence and the relevant arguments, with supporting documents.

The Committee's decision on the admissibility of the complaint is made public through its written notification to the parties as well as the States party to the Protocol; in addition, the decision is published on the Council of Europe website.

#### Decision on the merits

If a complaint has been declared admissible, the Committee, if it has not already done so, asks the respondent State to make written submissions on the merits of the complaint within a time limit which it sets. The President then invites the organisation that lodged the complaint to submit, on the same conditions, a response to these submissions. The President may then invite the respondent State to submit a further response.

Only States which have accepted the collective complaints procedure may submit comments on any complaints declared admissible against another State.

In the course of the examination of the complaint, the Committee may organise a hearing. The hearing may be held at the request of one of the parties or on the Committee's initiative. The Committee decides whether or not to act upon a request made by one of the parties. The hearing is public unless the President decides otherwise.

Following deliberation, the Committee adopts a decision on the merits of the complaint. It decides whether or not the Charter has been violated. The Committee transmits a report containing its decision to the parties and the Committee of Ministers of the Council of Europe.

### Follow-up of the Committee' decisions by the Committee of Ministers of the Council of Europe

In the event of violation of the Charter, the State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity.

The Committee of Ministers may adopt a resolution, by a majority of those voting. The resolution takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity. The Committee of Ministers' decision is based on social and economic policy considerations.

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the State. In view of the importance of this decision, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States party to the Charter may take part in the vote.

The Committee' decision on the merits of the complaint is made public at the latest four months after the report is transmitted to the Committee of Ministers. When the decision on the merits becomes public, it is published on the Council of Europe website.

The Committee of Ministers' role is very important because, in the chain formed by the complaints procedure, it can contribute to making the Committee' decisions operational and thereby giving concrete effect to the rights guaranteed under the Charter.

In cases where the European Committee of Social Rights has found that the Charter has been violated, the respondent State must present in every subsequent report on the provision(s) concerned in the complaint the measures taken to bring the situation into conformity. Ultimately, it falls to the Committee to determine whether the situation has been brought into compliance with the Charter.

#### **IV. OTHER ISSUES**

Mr Batur requested that the Secretariat of the European Committee of Social Rights organises a two-month training session in Strasbourg, for two officials from the Ministry in charge of drafting the report on the implementation of the Charter, upon the discussions on this subject with Rūçhan Işık in a previous meeting. This would allow them to better understand the expectations of the Committee in terms of the content of the reports and would contribute to findings the information required on several issues which led the Committee to adjourn its conclusions.

The delegation strongly supported this proposal and hoped it could be implemented in 2013.

## APPENDIX 1 — Turkey and the European Social Charter —

### Ratifications

Turkey ratified the Revised European Social Charter on 27/06/2007 and has accepted 91 of the revised Charter's 98 paragraphs (it had previously ratified the 1961 Charter on 24/11/1989).

It has accepted the collective complaints procedure.

### Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										
Grey = Accepted provisions											

### The Charter in domestic law

Automatic incorporation into domestic law and superiority of International treaties on fundamental rights and freedoms over national legislation (Article 90§5 of the Constitution).

### Reports \*

Between 1989 and 2013, Turkey submitted 15 reports on the application of the Charter and 3 reports on the Revised Charter.

The [4<sup>th</sup> report](#), submitted on 15/01/2012, concerns the accepted provisions relating Thematic Group 1 "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25). Conclusions in respect of these provisions were published in January 2013.

The [5<sup>th</sup> report](#), submitted on 24/05/2013, concerns the accepted provisions relating Thematic Group 2 "Health, social security and social protection" i.e.:

- The right safe and healthy working conditions (Article 3)
- The right to protection of health (Article 11)
- The right to social security (Article 12)
- The right to social and medical assistance (Article 13)
- The right to benefit from social welfare services (Article 14)
- The right of elderly person to social protection (Article 23)
- The right to protection against poverty and social exclusion (Article 30)

Conclusions in respect of these provisions will be published in December 2013.

\* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

## **Situation of Turkey with respect to the application of the Charter**

### **Examples of progress achieved in the implementation of social rights under the European Social Charter<sup>1</sup>**

#### **Children**

- ▶ Legislation aiming at increasing the availability of childcare (Law No. 5212).
- ▶ Legislation against domestic violence (Law No. 4320/1998).
- ▶ Under Section 82 of the Regulation on Seafarers of 31 July 2002, young workers under 18 years of age must now undergo regular medical examinations every 12 months.
- ▶ In 1997, compulsory education was extended to eight years.
- ▶ The new Labour Code, which entered into force in 2003, states that employment of children over the age of 14 in light work is permitted on the condition that they have completed compulsory education.

#### **Employment**

- ▶ Act No. 4817 regarding work permits for foreigners in Turkey which entered into force on 6 September 2003 provides that a foreign worker having a work permit may change his workplace and professional activity subject to the authorisation by the Ministry of Labour and Social Security.
- ▶ Since the repeal of Article 3/II A of the Act No. 506 on Social Insurance, non-nationals who have a working permit in Turkey are automatically insured for long-term risks, including unemployment. Application is no longer conditioned by the existence of bilateral or multilateral agreements.
- ▶ On 3 January 2005 the fee that employers had to pay for notification of vacancies to the employment services was scrapped.

#### **Labour rights**

- ▶ The constitutional amendments adopted in 2010 grant civil servants the right to collective bargaining. The prohibition of politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of work premises, and other forms of action has been removed. And so has the prohibition of membership of more than one trade union at the same time in the same branch of activity.

#### **Social protection**

- ▶ Introduction of a system of unemployment benefits (Act reforming certain aspects of the social security system, entered into force on 8 September 1999).

#### **Non-discrimination**

- ▶ General legislation (Labour Act No. 4857) against discrimination in employment (extension of the concept, possibility of reinstatement and of compensation proportional to the damage suffered etc.).

#### **Non-discrimination (Nationality)**

- ▶ The monthly poverty benefit (muhtaçlık aylığı) has been available regardless of nationality since 17 January 1997.
- ▶ Section 3-II/A of Social Insurance Act No. 506 of 1964 which excluded the affiliation of foreigners in respect of long-term risks has been repealed.

#### **Non-discrimination (Sex)**

- ▶ A new civil code, ensuring equality between spouses and between parents entered into force on 1 January 2002.

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<sup>1</sup> "1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure" (Article 2 of the Rules of the Committee).



### **Non-discrimination (Disability)**

► On the basis of Decree No. 573/97 persons with disabilities are permitted access to special and higher education.

## **Cases of non-conformity**

### **Thematic Group 1 "Employment, training and equal opportunities"**

#### *► Article 1 - Right to work-Paragraph 1 - Policy of full employment*

It has not been established that employment policy efforts have been adequate in combatting unemployment and in promoting job creation. (Conclusions 2012)

#### *► Article 152 – Right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

1. There is insufficient protection against discrimination in employment, in particular on grounds of age and sexual orientation.
2. The upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
3. Restrictions on access of nationals of other States Parties to several categories of employment are excessive
- 4 The Commercial Code authorised during the reference period the captain of a ship to use force to bring sailors back on board, even in cases where there is no threat to the safety of the vessel.
5. Certain provisions of the Martial Law No. 1402/1971 as amended by Act No. 4045/1994 and Act No. 2935/1983 permit restrictions on employment which go beyond those permitted by Article of the Charter. (Conclusions 2012)

#### *► Article 1852 – Right to engage in a gainful occupation in the territory of other Parties – simplifying formalities and reducing dues and taxes*

There is a dual application procedure for work and residence permits. (Conclusions 2012)

#### *► Article 1853 – Right to engage in a gainful occupation in the territory of other Parties – liberalising regulations*

The rules governing self-employment of foreign workers have not been liberalised and it has not been established that a residence permit of a foreign work who loses his/her job is not automatically revoked (Conclusions 2012)

#### *► Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination*

The employment of all women in certain underground or underwater occupations is prohibited; and women who do not have an indefinite labour contract with at least six months service and who are not employed at a business employing thirty or more workers are not protected by the prohibition of dismissal on grounds of sex. (Conclusions 2012)

#### *► Article 24 - Right to protection in case of dismissal*

The maximum amount of compensation in case of unlawful dismissal is inadequate. (Conclusions 2012).

#### *► Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer*

Employees having worked for less than one year for the same employer are excluded from protection against insolvency (Conclusions 2012).

### **Thematic Group 2 "Health, social security and social protection"**

#### *► Article 1151 – Right to protection of health – removal of the causes of ill-health*

The rate of infant mortality is manifestly too high; the manifestly inadequate budget for health care and the inadequacy of health care facilities and staff mean that the public is not guaranteed access to health care nationwide.<sup>1</sup>

[\(Conclusion 2009\)](#)

#### *► Article 1152 – Right to protection of health – advisory and educational facilities*

It has not been established that public information and awareness-raising on health matters as well as health education in schools were adequate. It has not been established that counselling and screening of the population at large as well as of children and adolescents, through school medical check-ups, were adequate  
([Conclusion 2009](#))

► *Article 13§1 – Right to social and medical assistance – adequate assistance for every person in need*  
The individual right to social and medical assistance does not exist.  
([Conclusion 2009](#))

► *Article 14§1 – Right to social welfare services – promotion or provision of social welfare services*  
There is no general social services system.  
([Conclusion 2009](#))

### **Thematic Group 3 “Labour rights”**

► *Article 4§4 – Right to a fair remuneration – reasonable notice of termination of employment*  
Eight weeks’ notice is not reasonable in the case of employees who have been working in the same company for fifteen years or more.  
([Conclusions 2010](#))

► *Article 4§5 – Right to a fair remuneration – limits to deduction from wages*  
It has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.  
([Conclusions 2010](#))

### **Thematic Group 4 “Children, families, migrants”**

► *Article 7§1 – Right of children and young persons to protection – prohibition of employment under the age of 15*  
The prohibition of employment under the age of 15 is not guaranteed in practice.  
([Conclusions 2011](#))

► *Article 7§2 – Right of children and young persons to protection – prohibition of employment under the age of 18 for dangerous or unhealthy activities*  
1. The minimum age of admission to employment in occupations regarded as dangerous or unhealthy is below 18 years;  
2. The situation in practice does not ensure the effective protection against employment under the age of 18 for dangerous or unhealthy activities.  
([Conclusions 2011](#))

► *Article 7§3 – Right of children and young persons to protection – prohibition of employment of young persons subject to compulsory education*  
Turkish law and practice do not ensure that children are not deprived of the full benefit of compulsory education.  
([Conclusions 2011](#))

► *Article 7§4 – Right of children and young persons to protection – length of working time for young persons under 16*  
The working time for children is manifestly excessive.  
([Conclusions 2011](#))

► *Article 7§8 – Right of children and young persons to protection – prohibition of night work*  
Night work for workers under 18 years of age is prohibited only in industrial undertakings.  
([Conclusions 2011](#))

► *Article 7§10 – Right of children and young persons to protection – special protection against physical and moral dangers*  
It has not been established that sufficient measures have been adopted to protect children from trafficking and all forms of sexual exploitation.  
([Conclusions 2011](#))

► *Article 8§1 – Right of employed women to protection of maternity – maternity leave*  
The level of maternity benefits provided to women employed in the private sector is not adequate.

[\(Conclusions 2011\)](#)

► *Article 8§2 – Right of employed women to protection of maternity – illegality of dismissal*

Not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

[\(Conclusions 2011\)](#)

► *Article 8§5 – Right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work*

Pregnant women, women who have recently given birth or who are breastfeeding are granted only unpaid leave when they cannot be reassigned to another post because of the dangerousness of their usual work.

[\(Conclusions 2011\)](#)

► *Article 16 – Right of the family to social, legal and economic protection*

1. Measures implemented to address the problem of domestic violence have not been sufficient;
2. It has not been established that there is a general system of family benefits.

[\(Conclusions 2011\)](#)

► *Article 17§1 – Right of children to social and economic protection – assistance, education and training*

1. Corporal punishment in the home is not explicitly prohibited;
2. Prison sentences for minors may be up to 20 years.

[\(Conclusions 2011\)](#)

► *Article 17§2 – Right of children to social and economic protection – free primary and secondary education; regular attendance at school*

Children unlawfully present on the territory do not have effective access to education.

[\(Conclusions 2011\)](#)

► *Article 19§1 – Right of migrant workers and their families to protection and assistance – assistance and information on migration*

1. It has not been established that free services are provided to migrant workers, particularly in obtaining accurate information;
2. It has not been established that measures against misleading propaganda relating to emigration and immigration have been taken.

[\(Conclusions 2011\)](#)

► *Article 19§4 – Right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation*

It has not been established that migrant workers may become founding members of trade unions.

[\(Conclusions 2011\)](#)

► *Article 19§6 – Right of migrant workers and their families to protection and assistance – family reunion*

It has not been established that the requirements imposed on migrant workers, notably with respect to health, are reasonable and likely to facilitate as far as possible the reunion of their family.

[\(Conclusions 2011\)](#)

► *Article 19§8 – Right of migrant workers and their families to protection and assistance – guarantees concerning deportation*

1. It has not been established that grounds for expulsion of a migrant worker are limited to those permitted by Article 19§8 of the Charter;
2. Article 21 of the 'Law on the Movement and Residence of Aliens' (Law 5683) provides that 'the Ministry of Internal Affairs is authorized to expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture'.

[\(Conclusions 2011\)](#)

► *Article 19§10 – Right of migrant workers and their families to protection and assistance – Equal treatment for the self-employed*

The situation in Turkey is not in conformity with Article 19§10 on the same grounds for which it is not in conformity with paragraphs 1, 4c, 6 and 8 of the same Article.

[\(Conclusions 2011\)](#)

► *Article 27§2 – Right of workers with family responsibilities to equal opportunity and treatment – parental leave*

The law does not provide fathers with a right to parental leave.

([Conclusions 2011](#))

► *Article 31§1 – Right to housing – adequate housing*

1. Measures taken by public authorities to improve the substandard housing conditions of most Roma in Turkey are inadequate;

2. Insufficient measures were taken by public authorities to improve the substandard housing conditions of most internally displaced persons.

([Conclusions 2011](#))

► *Article 31§2 – Right to housing – reduction of homelessness*

Evictions of Roma have occurred without respecting the necessary procedural safeguards to guarantee full respect of every individual's human dignity.

(Conclusions 2011)

**The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Turkish Government to provide more information in the next report:**

**Thematic Group 1 “Employment, training and equal opportunities”**

(Report to be submitted before 31 October 2016)

► Article 1§4 – Conclusions 2012

► Article 10§§4&5- Conclusions 2012

► Article 15§§1,2 &3- Conclusions 2012

**Thematic Group 2 “Health, social security and social protection”**

(Report to be submitted before 31 October 2012)

► Article 3§§ 1, 2, 3 & 4 - Conclusions 2009

► Article 12§1 - Conclusions 2009

► Article 13§§3 & 4 - Conclusions 2009

► Article 14§2 - Conclusions 2009

► Article 23 - Conclusions 2009

► Article 30 - Conclusions 2009

**Thematic Group 3 “Labour rights”**

(Report to be submitted before 31 October 2013)

► Article 2§§ 1, 2, 4, 5 & 6 - Conclusions 2010

► Article 21 - Conclusions 2010

► Article 22 - Conclusions 2010

► Article 26§§ 1 & 2 - Conclusions 2010

► Article 28 - Conclusions 2010

► Article 29 - Conclusions 2010

**Thematic Group 4 “Children, families, migrants”**

(Report to be submitted before 31 October 2014)

► Article 7§5 - Conclusions 2011

► Article 7§6 - Conclusions 2011

► Article 7§9 - Conclusions 2011

► Article 19§5 - Conclusions 2011

► Article 19§7 - Conclusions 2011

► Article 27§1 - Conclusions 2011

► Article 27§3 - Conclusions 2011

► Article 31§3 - Conclusions 2011

APPENDIX 2  
Programme



**MEETING ON THE NON-ACCEPTED PROVISIONS  
OF THE EUROPEAN SOCIAL CHARTER**

**organised by**

**the Department of  
the European Social Charter and the European Code of Social Security  
DG I  
Council of Europe**

**and**

**the Ministry of Labour and Social Security  
of the Republic of Turkey**

**Ankara, 6th May 2013**

**PROGRAMME**

Venue: Ministry of Labour and Social Security  
Inönü Bulvar No. 42  
EMEK TR – 06520 Ankara

Working languages: Turkish and English

The meeting is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on “non-accepted provisions”. It will consist of an exchange of views and information on the provisions not accepted by Turkey.

The overall objective is to ensure the effectiveness of fundamental social rights in Turkey.

1.30 pm

**Opening of the meeting**

Mr Erhan BATUR, Deputy Undersecretary of the Ministry of Labour and Social Security

Mr Régis BRILLAT, Head of Department, Executive Secretary of the European Committee of Social Rights, Council of Europe

1.45 pm

**Article 5: The right to organise**

Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights

Mr A. Rüçhan ISIK, Member of the European Committee of Social Rights

Legal and factual position in Turkey – presentation by Ms Ebru Öztüm TÜMER, Expert, Ministry of Labour and Social Security

Discussion

2.30 pm

**Article 6: The rights to bargain collectively**

**Paragraph 1: Joint consultation**

**Paragraph 2: Negotiation procedures**

**Paragraph 3: Conciliation and arbitration**

**Paragraph 4: Collective action**

Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights

Mr A. Rüçhan ISIK, Member of the European Committee of Social Rights

Legal and factual position in Turkey – presentation by Ms Ebru Öztüm TÜMER, Expert, Ministry of Labour and Social Security

Discussion

3.15 pm

*Coffee break*

3.45 pm

**Article 2: Right to just conditions of work**

**Paragraph 3: Annual holiday with pay**

Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights

Mr A. Rüçhan ISIK, Member of the European Committee of Social Rights

Legal and factual position in Turkey – presentation by Ms Ebru Öztüm TÜMER, Expert, Ministry of Labour and Social Security

Discussion

4.15 pm

**Article 4: The right to a fair remuneration**

**Paragraph 1: Decent remuneration**

Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights

Mr A. Rüçhan ISIK, Member of the European Committee of Social Rights

Legal and factual position in Turkey – presentation by Ms Ebru Öztüm TÜMER, Expert, Ministry of Labour and Social Security

Discussion

**4.45 pm**

**The collective complaints procedure**

Mr Régis BRILLAT, Head of Department, Executive Secretary of the European Committee of Social Rights, Council of Europe

Discussion

**5.15 pm**

**Concluding remarks**

**5.30 pm**

**Closing of the meeting**

APPENDIX 3

**MEETING ON THE NON-ACCEPTED PROVISIONS  
OF THE EUROPEAN SOCIAL CHARTER**

Ankara, 6th May 2013

**PARTICIPANT LIST**

**Council of Europe**

- Luis Jimena QUESADA,  
President of the European Committee of Social Rights
- Regis BRILLAT,  
Head of Department of the European Social Charter and Code of European Social Security,  
Executive Secretary of the European Committee of Social Rights
- Prof. Dr. R u chan IŐIK,  
Member of the European Committee of Social Rights

**Ministry of Labour and Social Security**

- Erhan BATUR, Deputy Undersecretary
- Ali Kemal SAYIN, Deputy Undersecretary

***General Directorate of External Relations and Services for Workers Abroad***

- Naim KAVLAK, Deputy General Director,
- Musa TOPUKSAK, Head of Department

***General Directorate of Labour***

- Nurcan  NDER, Acting General Director
- H seyin AŐI, Head of Department of Trade Unions and Collective Labour Relations
-  mer G M Ő, Head of Department of Legislation and Individual Labour Relations
- Ebru  zt m T MER, Expert

***General Directorate of Occupational Health and Safety***

- Ahmet G LSEREN, Head of Unit

***Presidency of Labour Inspection Board***

- AyŐeg l TUTAN, Deputy President of Labour Inspection Board
- Osman Nejat G NERİ, Chief Inspector of Labour



### ***European Union Coordination Department***

- Alper ZEYTUN, Head of Unit
- Mehmet İNER, Assistant Expert
- Çağrı ERGANİ, Assistant Expert

### ***Legal Consultancy Department***

- Yaşar GÜÇLÜ, 1st Legal Adviser
- Nuray KÖKEN, Legal Adviser

### **Ministry of Justice**

- Veysel BEKTAŞ, Deputy General Director
- Hakan TOPUÇAR, Investigating Judge

### **Ministry of Family and Social Policy**

- Serpil PENEZ ŞAHİN, Legal Adviser
- Serkan KOLAT, Expert on Family and Social Policy
- Erem İLTER, Expert on Family and Social Policy

### **Ministry of Foreign Affairs**

- Tolga UNCU, Head of Department of Citizens Living Abroad and Estate
- Oğuzhan GÖNÜLTAŞ, Consular and Specialised Officer

### **Ministry of Home Affairs**

- Muhterem İNCE, Head of Department
- Gönül KARAHAN, Head of Unit
- Aysun SOYLU, Chief

### ***Turkish National Police***

- Sedat ÖZCAN, 3rd Degree Police Chief
- Cafer KARAKAYALI, Chief Police Officer
- Ali YANIK, Deputy Police Chief

### **Ministry of National Defense**

- Mahmut Saracer, Colonel

### **Social Security Institution**

- Harun HASBİ, Head Department of EU and External Relations
- Mehmet Turgay EROL, Expert on Social Security

### **Turkish Employment Agency**

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### **State Personnel Presidency**

- Enes POLAT, Deputy President

**Declaration of the Committee of Ministers  
on the 50th anniversary of the European Social Charter**

*(Adopted by the Committee of Ministers on 12 October 2011  
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.