19/02/2014 RAP/RCha/TUR/6(2014)

EUROPEAN SOCIAL CHARTER

6th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF TURKEY

(Articles 2, 4, 21, 22, 26, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 19 February 2014

CYCLE 2014

ARTICLE 2 – ALL WORKERS HAVE THE RIGHT TO JUST CONDITIONS OF WORK

Article 2 Paragraph 1

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

Scope of the provisions as interpreted by the ECSR

Establishment of reasonable limits on daily and weekly working hours through legislation, regulations, collective agreements or any other binding means; weekly working hours should be progressively reduced to the extent permitted by productivity increases; flexibility measures regarding working time must operate within a precise legal framework and a reasonable reference period for averaging working hours must be provided.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

No amendments in the existing legislation were made in the reporting period. Besides, information about civil servants not mentioned in our previous reports is stated below:

Weekly working hours of the civil servants have been regulated by Article 99 of Civil Servants Law No. 657. Accordingly, weekly working hours is generally 40 hours for the civil servants. This duration is regulated by keeping Saturday and Sunday as holiday. However, different working hours may be determined by special laws, or statutory rules and orders to be enacted in regard to special laws, taking into account the characteristics of institutions and services.

2. IMPLEMENTATION

Compliance to regulations set out in the Law no. 4857 and other related legislation about working hours has been inspected in the workplace inspections within the inspection programs carried out by the Labour Inspection Board.

It is stipulated in Article 63 of the Labour Law that weekly working hours are limited to 45 hours at most and daily working hours are limited to 11 hours at most. An administrative fine is applied according to Article 104 of the same law in case of violation of the above mentioned article of the law.

Average daily working time for the persons working as press members is 8 hours while average daily working time and average weekly working time for the persons working under the Maritime Labour Law are 8 and 48 hours respectively.

For the persons under the scope of Turkish Code of Obligations No. 6098, any specific working time is not stipulated.

Apart from these, statistical information on average working time for each major occupational group is not available.

However, the working time for the occupations necessitate maximum of seven and a half hours or less because health and safety rules are clarified with a specific regulation.

Furthermore, according to related bylaw, weekly working time for the persons working in radiology, radium and electricity related treatment institutions and similar facilities is limited to 35 hours.

3. STATISTICS AND OTHER INFORMATION

In this reference period, 1,205 breaches have been identified by the Labour Inspectorate Board and administrative penaltie fined in accordance with the Article 104 of the Labour Law amount to a total of 1,213,179 Turkish Liras in this respect.

The revaluation of the amounts of administrative penalties takes place at the beginning of each calendar year in accordance with the Article 17 of Misdemeanour Code No. 5326 and are published in the Official Gazette by the Ministry of Treasury.

The amounts of administrative penalties applicable in this reference period were as follows:

Table 1: Amount of Administrative Penalties According to the Article 104 of the Labour Law

Years	2009	2010	2011	2012
Amount of Administrative Fines	1,012 TL	1,034TL	1,113 TL	1,200 TL ≈492 € (Jan. 2012 prices)

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS AND CRITICISMS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Do the regulations in place allow a worker to work 66 hours (11 hours per day during a 6 day working week) in some of the weeks of the reference period on condition that the average weekly working time has not exceeded 45 hours?

- Turkish legislation on the issue (Article 63 of Labour Law No. 4857) is as follows: "*Provided that the parties have so agreed, working time may be divided by the days of the week worked in different forms on condition that the daily working time must not exceed eleven hours. In this case, within a time period of two months, the average weekly working time of the employee shall not exceed normal weekly working time. This balancing (equalising) period may be increased up to four months by collective agreement*".

In other words, Turkish legislation allows a worker to work 66 hours in some of the weeks of the reference period provided that average working time has not exceeded 45 in two months in the reference period.

Please provide information on the supervision of working time regulation by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

- Information on this issue has been provided above.

Article 2 Paragraph 2

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to provide for public holidays with pay;

Scope of the provisions as interpreted by the ECSR

The right to public holidays with pay should be guaranteed; work on public holidays should only be allowed in special cases; work performed on a public holiday should be paid at least at double the usual rate.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

There has not been any revision of the legislation in practice in this reference period.

2. IMPLEMENTATION

Compliance with the provisions on "working in the national and general holidays" provided for by the Labour Law No. 4857 and other related legislation is monitored by the inspection programmes carried out by the Labour Inspection Board.

According to the Article 44 of the Labour Law working in the national and general holidays shall be determined by collective labour agreements and labour agreements and in case related agreements do not have a specific provision on this issue working in national and general holidays is up to the consent of the workers. Article 47 of the above mentioned law also requires that the workers are paid a full day's wages for the national and public holidays on which they have not worked; if they work instead of observing the holiday, they shall be paid an additional full day's wages for each day worked. In cases of the breach of these articles, administrative penalties are stipulated by the Article 102(a) of the Labour Law.

The right to public holidays is regulated by the Law on National and General Holidays No. 2429. According to this Law, proclamation of the Turkish Republic on 29th October 1923 is celebrated as a National Holiday each year (starting at 1.00 p.m. on the 28th of October). Other official and religious holidays are listed below:

Official holidays:

- 23rd of April, National Sovereignty and Children's Day;
- 19th of May, Commemoration of Atatürk, Youth and Sports Day;
- 30th of August, Victory Day;

Religious holidays (date of religious holidays varies each year due to the difference between Islamic calendar and Roman calendar):

- Ramadan Feast, three and a half days;
- Feast of Sacrifice, four and a half days;

Apart from these holidays, 1st of January and 1st of May are also public holidays (New Year's Day and Labour and Solidarity Day respectively).

3. STATISTICS AND OTHER INFORMATION

The Labour Inspection Board identified 150 breaches of the Law in this respect within the reference period and a total of 1,966,674 Turkish Liras of administrative penalty was imposed as a result.

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS AND CRITICISMS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Is the base salary maintained, in addition to the increased pay rate?

- Article 47 of the Labour Law is as follows:

"***Remuneration for holidays***

Article 47: *Employees in establishments covered by this Act shall be paid a full day's wages for the national and public holidays on which they have not worked; if they work instead of observing the holiday, they shall be paid an additional full day's wages for each day worked.*

In establishments where a percentage wage system is in effect, the wage for the national and public holidays shall be paid to the employee by the employer."

In other words, for the work carried out on a public holiday, the base salary is maintained in addition to the increased pay rate.

Article 2 Paragraph 4

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

Scope of the provisions as interpreted by the ECSR

Application of preventive measures to eliminate the risks in inherently dangerous or unhealthy occupations; where it has not yet been possible to eliminate or sufficiently reduce these risks some form of compensation should be ensured to those workers exposed to such risks, namely reduced working hours or additional paid holidays.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

Occupational Health and Safety Law No. 6331, which is compatible with the OSH Framework Directive 89/391/EEC and with the ILO Conventions No. 155 and 161, have been published in the Official Gazette dated 30 June 2012 and No. 28339. The scope of the Law is not only limited to the workers employed with a labour agreement but also it includes any work and workplaces including all work and workplaces owned by public and private sector, employers and their representatives, all workers including apprentices and trainees with the exception of Turkish Armed Forces, activities of general law enforcement officers and National Intelligence Organization, intervention activities of disaster and emergency units, domestic work, self-employed persons, activities of work dorms, training, security and vocational courses.

The Law No. 6331 targets the best conditions possible in terms of occupational health and security and constant enhancement of the work conditions. To that end, the Law provides for a general preventive approach and imposes the obligation of "risk assessment".

The above mentioned Law defines "Risk evaluation" as: "activities required for identifying hazards which are existing in or may arise from outside the workplace, analysing and rating the factors causing these hazards to turn into risks and the risks caused by the hazards and determining control measures" and identifies general prevention principles, risk assessment and risk management as the basic elements for achieving occupational health and security while envisaging systematic planning of all necessary workplace measures by employers.

According to the Paragraph 1(c) of the Article 30 of the Law, procedures and rules related to risk assessment shall be set out by the regulations to be prepared by the Ministry. In this context, Regulation on the Occupational Health and Safety Risk Assessment has been published in the Official Gazette dated 29 December 2012 and No. 28512.

According to the provisions of the regulation, processes of definition of the risks, identification and analysis of the risks, determination of risk control measures, documentation, updating and renovation of the studies shall be followed in all workplaces starting from projection and establishment. The groups such as elderly, disabled, pregnant women and breastfeeding mothers, who require special policies, are taken into account specifically in the risk assessment process. If risk assessment is not performed in workplaces such as mines, metal and construction works, sectors working with hazardous chemicals and workplaces with the risk of big industrial accidents; all operational activities have to be stopped.

Besides, "the right to abstain from work" is defined in Article 13 of the Law No. 6331. Accordingly, workers exposed to serious and imminent danger shall file an application to the committee or the employer (in the absence of such a committee) shall request an identification of the present hazard and measures for emergency intervention. In the event that the committee or the employer takes a decision that is supportive of the request made by the worker, the worker may abstain from work until necessary measures are put into practice. The worker shall be entitled to payment during this period of abstention from work and his/her rights arising under the employment contract and other laws shall be reserved.

2. IMPLEMENTATION

The measures taken for the implementation of the legislation are indicated below:

i. Project for Enhancing Occupational Health and Safety

The Project for Enhancing Occupational Health and Safety, which was presented to the Ministry of Development for the purpose of improving occupational health and safety in small and medium sized enterprises and raising awareness, has been adopted with a budget of 9,150,000 Turkish Liras. The target sectors in the project are the sectors of mining, construction, metal, textile, leather, furniture, food and chemistry. The activities which will be realized within the scope of the project are stated below:

Developing occupational health and safety management systems (İSG-YS) for the target sectors:

Making field study in order to improve the risk assessment and occupational health and safety performance monitoring methods which will be used in İSG-YS for the

sectors and in their implementation after selecting at least 5 enterprises from the sectors of textile, leather, furniture, food and chemistry.

Extending occupational health and safety management systems for the target sectors:

Making field studies for the purpose of extension at at least 15 enterprises (except the sectors of metal, construction and mining) for each of the target sectors after preparing the guide books in which there are occupational health and safety management systems for the sectors as well as the risk assessment in their implementation and occupational health and safety monitoring methods and organizing seminars for at least 3 days which the related party and 8000 occupational health and safety professionals in total shall benefit.

Raising awareness and introduction of project activities in the field of occupational health and safety:

Organizing a comprehensive campaign involving means of communication at national level in order to raise awareness in the field of occupational health and safety and introducing also the project activities via conferences, meetings, posters, spot announcements etc. in this campaign.

ii. Introduction of law activities

Introduction activities are carried out across Turkey in order to both contribute to the creation of safety culture awareness in our society and to introduce the Law No. 6331 across our country and to tell the employers and the employees their responsibilities. Within this scope, introduction seminars have been realized in 18 provinces in 2012 and 11,160 participants have been reached in total. As for 2013, the introduction of law activities continued in 63 provinces with around 30,000 participants.

With the Law on Occupational Health and Safety No. 6331 which was published in the Official Gazette dated 30/06/2012 and entered into force on 30/12/2012, the following measures have been taken in order to grant leave of absence with pay to the employees in the workplaces where there is serious and close danger and risks posing a threat to the health or to reduce working hours and to implement the existing legislation.

Pursuant to Article 13 of the aforesaid Law, workers exposed to serious and imminent danger shall file an application to the committee or the employer in the absence of such a committee requesting an identification of the present hazard and measures for emergency intervention. In the event that the committee or the employer takes a decision that is supportive of the request made by the worker, the worker may abstain from work until necessary measures are put into practice. The worker shall be entitled to payment during this period of abstention from work and his/her rights arising under the employment contract and other laws shall be reserved. Furthermore, the employees can avoid working in the hazardous area without applying to the committee or the employer in cases where serious and close danger is unavoidable. In such cases the rights of employers are also reserved.

Within the scope of Article 25 of the Law, in case of any situation found dangerous to workers' life in the premises, working methods or equipment, operations in the premises or any part of it shall be stopped by the labour inspectors of the Ministry taking into account the nature of the hazard and the part of the premises and the workers to be affected by the hazard until such hazard is eliminated. The employer shall make the payments of his workers unemployed due to the cease of operations or assign them to another job on condition that they are not paid less.

The duties, authorities, responsibilities, rights and obligations of the employers and the employees have been regulated by the “Law on Occupational Health and Safety” No. 6331 in order to ensure occupational health and safety in the premises and to improve existing health and safety conditions. Article 4 of this Law regulates the general responsibility of the employer. The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work. Within this framework, the employer shall make studies for preventing the occupational risks, taking the necessary measures including giving training and information, making organizations, providing necessary equipment, ensuring that health and safety measures are adjusted taking account of changing circumstances and improving existing situations. The employer also monitors and checks whether occupational health and safety measures in the workplace are followed and ensures that non-confirming situations are eliminated. He makes risk assessment or get one carried out. He takes into consideration the worker’s capabilities as regards health and safety where he entrusts tasks to the worker.

Pursuant to Article 103 of the Public Servants Law No. 657, a monthly health leave is given to the personnel working with radioactive rays during their service in addition to their annual leave.

3. STATISTICS AND OTHER INFORMATION

There is no statistical information and data about the subject.

B- RESPONSES TO THE FURTHER INFORMATION REQUEST AND CRITICISMS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Please provide the list of activities regarded as dangerous and unhealthy.

“Regulation on Arduous and Dangerous Works”, which was drafted in accordance with the Article 85 of Labour Law and published in the Official Gazette No. 25494 and dated 16/06/2004, and “Circular on the Occupational Training of the Workers to be Employed in Arduous and Dangerous Workplaces” dated 31/05/2009 and No. 27244 have been repealed with the Article 37 of the “Law on Occupational Health and Safety” No. 6331 which entered into force with the Official Gazette dated 30.06/2012 and No. 28339.

Article 17 of the Law No. 6331 on “Training of Workers” includes the following provision: *Workers failing to present documents to prove that they have received vocational training on their job might not be employed in jobs classified as hazardous and very hazardous which require vocational training*. Besides Article 30 of the same Law titled “Regulations Related to Occupational Health and Safety” calls for a new arrangement in this regard: “*Training sessions to be organized for workers and their representatives, certification of these training sessions, qualifications of people and institutions providing occupational health and safety training, work requiring professional training”*.

As a result of the publication of the Law No. 6331, “Regulation on the Occupational Training of the Workers to be Employed in Arduous and Dangerous Workplaces” drafted and entered into force with the Official Gazette dated 13/07/2013 and No. 28706 in accordance with the Articles 17 and 30 of the same Law.

Pursuant to the Article 9 of the Law No. 6331 titled “Determining the Hazard Class”, Circular on Hazard Classes of Workplaces According to Occupational Health and Safety entered into force with the publication in the Official Gazette dated 26/12/2012

and dated 28509 and provides a list of hazardous works This list of hazardous works is an exhaustive one which is also open to any revisions if necessary (List of Hazard Classes of Workplaces is included in Annex-1 in Turkish) and some significant examples from the list can be found below:

Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
A	AGRICULTURE, FORESTRY AND FISHERIES	
01	Plant and Animal Production, hunting and related service activities	
01.01	Growing of annual crops	
01.11	Growing of cereals (except rice), legumes and oily seeds	
01.11.07	Growing of legumes	Medium Hazard
01.11.12	Growing of Cereals	Medium Hazard
Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
B	MINING AND QUERRYING	
05	Coal and Lignite Drawing	
05.1	Hard Coal Mining	
05.10	Hard Coal Mining	
05.10.01	Hard Coal Mining	High Hazard
Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
C	MANUFACTURING	
10	Manufacturing of Food Products	
10.11	Processing and Storing Meat and Manufacturing of Meat Products	
05.10	Processing and Storing Meat	
05.10.01	Butchery (including storage)	Medium Hazard
Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
D	GENERATION AND DISTRIBUTION OF ELECTRICITY, GAS, STEAM AND CLIMATIZATION	
35	Generation and Distribution Of Electricity, Gas,	

	Steam and Systems of Air-Conditioning	
35.1	Generation, Transmission and Distribution of Electric Power	
35.11	Generation of Electric Power	
35.11.19	Generation of Electric Power	High Hazard
Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
F	CONSTRUCTION	
41	Building Construction	
41.1	Projection of Construction Plans	
41.10	Projection of Construction Plans	
41.10.01	Projection of Building Plans	Low Hazard
41.10.02	Activities of Building Construction Cooperatives	High Hazard
Six-fold Code of NACE Rev.2	**Six-Fold Definition of NACE Rev.2**	**Hazard Class**
H	TRANSPORTATION AND STORAGE	
49	Land Transport and Pipeline Transport	
49.1	Intercity Railroad Passenger Transportation	
49.10	Intercity Railroad Passenger Transportation	
49.10.01	Intercity Railroad Passenger Transportation	Low Hazard

Further information on the dangerous occupations and the measures taken in this regard will be given in the next national report of Turkey with regard to Article 3 of the Charter.

Please state whether arrangements such as reduced working hours, additional paid leave or other measures to shorten exposure to risk are provided for by national legislation.

Article 4 of the “Regulation on the Occupations Necessitate Maximum of Seven and a Half Hours or Less Because of Health and Safety Rules”, which entered into force with the Official Gazette dated 16/07/2013 and No. 28709, identifies the occupations which require maximum of 7.5 hours limit for daily working time. Article 5 identifies the working time for these occupations. According to this, the working time for such kind of occupations is limited between 4 and 7.5 hours. The persons employed in the jobs under the scope of this Regulation, shall not be employed after their maximum daily working periods (e.g. for the works performed in mercury blast-furnaces or for the works vulnerable to cs-gas affects maximum daily working time is limited with six hours).

Article 2 Paragraph 5

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

Scope of the provisions as interpreted by the ECSR

The right to a weekly rest period coinciding, as far as possible, with the day traditionally recognised as a day of rest should be guaranteed; weekly rest periods may not be replaced by compensation and cannot be given up.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

During the reporting period there has not been any legislative amendment. However, information on civil servants, which was not provided in previous reports, can be found below.

According to the Article 99 of the Civil Servants Law with No. 657, average weekly working hour for civil servants is 40 hours in general. This period is regulated so that Saturdays and Sundays are day off.

2. IMPLEMENTATION

There has not been any specific measure to implement the related legislation in this reporting period.

STATISTICS AND OTHER INFORMATION

No statistics or any kind of information is available in this regard.

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Please provide information on exceptions to the rules on weekly rest periods?

Article 46 of the Labour Law No. 4857 provides that employees covered by the law are entitled to an uninterrupted rest period of at least 24 hours in every seven days and it does not include any specific provision regarding exception to this basic rule.

Article 2 Paragraph 6

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Scope of the provisions as interpreted by the ECSR

The right of workers to written information upon commencement of their employment should be guaranteed. This information should cover essential aspects of employment relationship.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

No amendments in the existing legislation were made in the reporting period. Besides, information about civil servants not mentioned in our previous reports is stated below:

The service conditions of the civil servants, qualifications, their instatement and progress, obligations, rights and responsibilities, salary and appropriations and other personal affairs have been regulated by Civil Servants Law No. 657. In this Law; obligations and responsibilities of the civil servants, general rights, laws they have to obey, requirements for being accepted as a civil servant, their instatement and progress, replacement, working hours and vacations, discipline issues, financial and social rights and training of civil servants have been regulated in sections and articles.

2. IMPLEMENTATION

No measures have been taken due to implementation of the existing legislation.

3. STATISTICS AND OTHER INFORMATION

In this reference period, 366 breaches have been identified by the Labour Inspectorate Board and administrative penalties in accordance with the Article 8 of the Labour Law No. 4857 amount to a total of 657,559 Turkish Liras in this respect.

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Please confirm that whether all the information figures referred in the Conclusions are included in the employment contracts of employees who have a written contract and whether there are other written sources containing information on the essential aspects of the employment relationship for employees who do not have a written contract.

Article 8 of the Labour Law No. 4857 is as follows:

"Article 8 - Employment contract is an agreement whereby one party (the employee) undertakes to perform work in subordination to the other party (the employer) who undertakes to pay him remuneration. The employment contract is not subject to any special form unless the contrary is stipulated by the Act.

Written form is required for employment contracts with a fixed duration of one year or more, such written documents are exempt from the stamp tax and all kinds of fees.

In cases where no written contract has been made, the employer is under the obligation to provide the employee with a written document, within two months at the latest, showing the general and special conditions of work, the daily or weekly working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract."

To sum up, national legislation does not impose a restriction for the employment contracts on the condition that they do not include provisions contrary to the Labour Law. However, in cases where no written contract has been concluded, a written document including above mentioned elements is required.

Article 2 Paragraph 7

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Scope of the provisions as interpreted by the ECSR

Compensatory measures should be guaranteed for workers performing night work.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1. LEGAL FRAMEWORK

No amendments in the existing legislation were made in the reporting period. Besides, information about civil servants which was not mentioned in our previous reports is stated below:

Working hours and procedures of the public servants employed in services delivered on 24 hour basis are regulated by their organizations according to the Article 101 of Civil Servants Law No. 657. However, women public servants cannot be assigned for night duties and shifts prior to twenty-fourth week of pregnancy in the event of such being specified in medical report and after the twenty-fourth week of the pregnancy in any case and for one year following the birth. Disabled public servants cannot be assigned for night duties and shifts unless such is requested by the public servant.

Healthcare personnel, who are assigned for duties out of regular working hours, are remunerated with additional pay.

2. IMPLEMENTATION

No measures have been taken in order to implement the existing legislation.

3. STATISTICS AND OTHER INFORMATION

In this reference period, 760 breaches of the Article 69 of the Labour Law No. 4857 have been identified by the Labour Inspectorate Board and administrative penalties in accordance with the Article 104 of the same law amount to a total of 863,778 Turkish Liras fined in this respect.

ARTICLE 4-RIGHT TO A FAIR REMUNERATION

Paragraph 2- With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

Scope of the provisions as interpreted by the Committee of Social Rights (ECSR)

Paragraph 2: The right to an increased remuneration rate for overtime work should be guaranteed to workers; where leave is granted to compensate for overtime, it should be longer than the overtime worked.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1. Legislative amendments and reforms

In the reference period regulations have been made by the labour laws (the Labour Law no. 4857, the Maritime Law no. 854, the Press Labour Law no. 5953) and for ones outside the scope of the said laws regulations have been made under the article 398 of the Turkish Code of Obligations no. 6098 entitled “Obligations on Overtime Work” and article 402 entitled “Overtime Pay.” Information on the legal regulation concerning civil servants is given below which was not included in our previous national report.

In general, the overtime work of civil servants has been regulated by Article 178 of the Civil Servants Law no. 657 and by the “Regulation on Procedures of Application of Overtime Work” which entered into force upon its publication in the Official Gazette no. 15176 dated 13 March 1975, no pursuant to this article. In article 3 of the above mentioned Regulation, the work exceeding 40 hours of general weekly duration of work of civil servants is defined as “overtime work.” In order to pay for overtime work, the civil servant should perform his/her duty de facto except normal working hours. The duration of overtime work and the hourly rate are determined by the Decree of the Council of Ministers.

Another legal regulation on the overtime pay of civil servants is included in the additional article 13 of the Decree with the Force of Law no. 375. According to the provision of this article, overtime work can be done provided that it would not exceed 50 hours in a month and 6 months in a year for works that are considered essential and that should be completed within certain period of time on condition that Decree of the Council of Ministers are produced each time.

Pursuant to the provisions of the Law no. 657, the civil servants can take a leave in return for overtime work. 1 day of leave is calculated for each 8 hours of overtime work.

Also, by the collective labour agreements conluded pursuant to the Law on Public Servants’ Trade Unions and Collective Labour Agreements, no. 4688, regulations concerning overtime work and pay can be made.

2. Implementation of the legislation

The legislation in force secures the conformity to the provisions of the Revised Social Charter and applications are supervised by the inspectors. In case of practices violating the legislation are found; sanctions, notably fines, are imposed which are stipulated by the legislation.

3. Statistical information and data

Article 41 of the Labour Law no. 4857 regulates at what increased rates overtime pay should be paid. Labour inspectors supervise the implementation of the said article, whether or not the overtime pay are calculated according to the Law and whether or not payments are made according to these calculations. As for the violation of this article, administrative fine is imposed pursuant to article 102/c of the Labour Law no. 4857. In this context, 1513 violations of article 41 of the Labour Law no. 4857 have been found and hence, administrative fines totaling TL 11.037.699 have been imposed pursuant to the same Law during the reference period.

B) INFORMATION REQUESTED BY THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

Application of overtime work for senior state officials and senior managers

The Committee requests information about whether the statutory regulations on the subject cover all kinds of work and whether any exceptions for senior senior state officials and senior managers are stipulated or not in this context. -Information concerning the legislation regulating overtime work of the civil servants is presented above. As a rule senior civil servants are not granted overtime pay.

The senior managers of the private sector can sign contracts with their employers covering different special rights provided that they shall not be less than the rights envisaged by the laws.

Paragraph 3- With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of men and women workers to equal pay for work of equal value.

Scope of the provisions as interpreted by the ECSR

Paragraph 3: The right to equal pay without discrimination on grounds of sex should be expressly provided for in legislation. Appropriate and effective remedies should be provided in the national legislation in the event of alleged wage discrimination on grounds of sex.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1. Legislative amendments and reforms

The legal regulation relating to the issue has been realized under the article 5 of the Labour Law no. 4857 entitled “Principle of Equal Treatment”.

In the said article, it is specified that no discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons is permissible in the employment relationship, that a lower wage can not be decided for

an equal or equivalent work on the grounds of sex and that implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage.

In case the Ministry of Labour and Social Security is informed that the employer violates these obligations, administrative fine is imposed, as a result of supervision, pursuant to article 99 of the Labour Law no. 4857.

No amendment has been introduced to the current legislation within the reference period. Information about legal regulations concerning the civil servants is given below.

Regulations on financial and social rights of the civil servants are determined by the Civil Servants Law no. 657 as well as other laws and collective agreements, introduced accordingly. In accordance with the above mentioned regulations, objective criteria such as the education level of the employee as well as the title and degree of his/her position, the risk and the level of difficulty and degree of responsibility of the work provide basis for the calculation of the wages of civil servants and hence, no discrimination is made on the ground of sex.

Furthermore, article 122 of the Turkish Penal Code regulates the discrimination issue and hindering any person from being engaged in an economic activity on the grounds of language, race, colour, sex, political opinion, philosophical belief, religion, sect or similar reasons is punished.

2. Implementation of the legislation

The legislation in force secures the conformity to the provisions of the Revised Social Charter and applications are supervised by the inspectors. In case of practices violating the legislation are found; sanctions, notably fines, are imposed which are stipulated by the legislation.

Within this scope, it is considered beneficial to give detailed information on the Circular no. 2010/14 of the Prime Ministry which was published in the Official Gazette no. 27591, dated 25 May 2010 and mentioned in the 4th National Report.

The aforesaid Circular, a copy of which is attached (Annex: 2), was put into force with a view to strengthening socioeconomic status of women, ensuring equality of women and men in social life, enhancing employability of women to attain the goals of sustainable economic growth and social development and especially ensuring equal pay for the work of equal value.

Accordingly, for ensuring the equality of women and men inter alia;

-Establishment of “National Board of Monitoring and Coordination of Employment of Women” comprising all steakholders’ representatives including i.e. the relevant ministeries, public institutions and organisations, civil servants’ and public employers’ trade unions and NGOs dealing with the employment of women, under the Chairmanship of the Undersecretary of the Ministry of Labour and Social Security,

- Assignment at a level of deputy undersecretary in all ministeries in order to monitor the implementation of the laws, regulations and the other arrangements about the equal opportunity regarding the employment of women in the public sector, furthermore assignment of a unit on “Equal Opportunity for Women and Men”,

-Looking into whether the provisions on gender equality expressed in article 5 of the Labour Law, no. 4857, particularly the matter of “wage” are complied with or not in

the supervisions carried out both in public and private sector enterprises and mentioning the results in the report,

-Including the matter of equality of women and men as well as the statistical data, and the scientific researches and the allocations appropriated regarding this matter in the strategic plans, performance programmes and activity reports prepared by public institutions and organisations and local administrations,

-Making an impact evaluation for equal opportunity while preparing draft legislation by public institutions and submitting them in the annex of the drafts,

-Non-discrimination based on gender in job examinations and participation in on-the-job training programmes, promotion, assignment to top management and pursuing the principle of equal opportunity for women and men,

-Including the matter of "equal opportunity for women and men" in the on-the-job training programmes implemented by all public institutions and organisations,

-Observing the equal opportunity for women and men in the studies made by the Provincial Employment and Vocational Training Boards and ensuring the participation of one representative from NGOs dealing with the women issues in those Boards,

were stipulated.

The high level "Board of Coordination" mentioned above meets under the Chairmanship of the Undersecretary of the Ministry of Labour and Social Security in 4 month periods.

3. Statistical information and data

Through the supervisions carried out within the reference period, 18 violations of article 5 of the Labour Law no. 4857 have been found and hence, administrative fines totaling TL 15.630 have been imposed pursuant to article 99/a of the same Law.

Paragraph 4- With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment.

Appendix to Paragraph 4:

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Scope of the provisions as interpreted by the ECSR

The right of all workers to a reasonable period of notice for termination of employment should be guaranteed.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1. Legislative amendments and reforms

No amendment has been introduced to the current legislation within the reference period. Information which were not available in the previous national report about legal regulations concerning the civil servants is given below.

Being a civil servant is a secured occupation and it is not possible to lay off a civil servant except for the circumstances specified in the Civil Servants Law no. 657. The circumstances and reasons for dismissal from the public office have been regulated in sub-paragraph (E) entitled "Dismissal from Public Office" of article 125 entitled "Types of disciplinary penalties and acts and situations that imposes penalty" of the Civil Servants Law no. 657

2. Implementation of the legislation

The legislation in force secures the conformity to the provisions of the Revised Social Charter and applications are supervised by the inspectors. In case of practices violating the legislation are found, sanctions, notably fines, are imposed which are stipulated by the legislation.

3.Statistical information and data

In line with the amendment made by article 77 of the Law no. 6111 dated 13 February 2011, the complaints of the workers, whose labour contracts were actually terminated, concerning their claims resulting from the Law or individual or collective agreements used to be handled by the Provincial Directorates of Labour and Employment Agency as of13 December 2011.

Supervisions used to be carried out by the Labour Inspection Board of the Ministry of Labour and Social Security, prior to 13 December 2011, to adress the complaints concerning allegations that employment contracts of workers had been unjustifiably terminated by the employer. In this framework, supervisions carried out on the grounds of immediate termination from 1 January 2009 to 13 December 2011 falling within the reporting period are as fallows:

- Supervisions in respect to 39.147 workers were held in 23.056 workplaces in 2009 and it was found that employment contracts of 3.703 workers,
- Supervisions in respect to 16.066 workers were held in 9.066 workplaces in 2010 and it was found that employment contracts of 946 workers,
- Supervisions in respect to 7.247 workers were held in 4.115 workplaces in 2011 and it was found that employment contracts of 462 workers,

were terminated pursuant to article 25 of the Labour Law, no. 4857.

In cases where it was found that the right to immediate terminations of employment contract were used violating the law by employers were observed and no reconciliation between workers and employers reached or employees did not waive their right to file a complaint, employers were notified to pay for the compensation claims the workers were entitled to and workers were notified, if their compensation claims had not been satisfied, that they had the right to appeal to the court pursuant to the provisions of articles 18, 20 and 21 of the Law.

B) INFORMATION REQUESTED BY THE ECSR

1. 8 week notice period designated for the worker whose employment contract spans over 3 years

The ECSR has concluded that 8 week period of notice for a worker whose employment contract has spanned over 3 years, envisaged by paragraph (d) of article 17 of the Labour Law no. 4857 entitled “Termed termination”, had not been in conformity with the Revised European Social Charter. In regard to this matter, with a view to bringing the national legislation in conformity with the said Charter, an evaluation meeting was held by the related divisions of the Ministry of Labour and Social Security and representatives of social partners on 30 June 2011.

According to the views stated in the meeting and later communicated in written form, representatives of workers’ trade unions, namely the Türk-İş (Confederation of Turkish Trade Unions) and the DİSK (Confederation of Progressive Trade Unions of Turkey), expressed that they agreed to neccesary amendments in the Labour Law with respect to periods of notice in accordance with the conclusions of the ECSR. Employers’ organization the TİSK (Turkish Confederation of Employer Associations) openly opposed to the amendment of existing legislation stating that periods of notice

had been sufficient and said amendments might have left negative impacts on growth, employment and competitiveness of the businesses.

The views of social partners and socioeconomic conditions of our country as well as abovementioned conclusion of the ECSR will be taken into consideration in the forthcoming elaborations on amending the legislation.

2. Right to immediate termination of contract by the employer on justifiable grounds

The ECSR has asked for details concerning the reasons for immediate dismissal, in particular which body had the authority to rule on such decisions and the national case law concerning cases of immediate dismissal, envisaged in article 25 of the Labour Law.

Reports and statements taken and prepared by labour inspectors who are authorised to monitor, supervise and inspect working life as regards the implementation of article 25 of the Labour Law no. 4857 and officials of the Provincial Directorates of Labour and Employment assigned to analyzing workers' complaints remain valid until otherwise proven. Parts of reports and statements prepared by labour inspectors concerning workers' claims could be contested by parties through local labor courts within thirty days. Parties could challenge the local court ruling in accordance with article 8 of Law on Labour Courts no. 5521. Appeal does not prevent workers from satisfying their claims ruled by labour courts.

The table showing the statistical information regarding the disputes between employees and employers brought to the courts is attached herewith (Annex: 3).

Moreover, Maritime Labour Law no. 854 and Press Labour Law, no. 5953 and Turkish Code of Obligations no. 6098 contain regulations in this regard.

3. The Committee has stated that additional information has been required on notification mechanisms concerning other cases of termiation of employment contract. As regards this matter, article 109 of the Labour Law no. 4857 entitled "Written Notification" provides that "the notifications envisaged by this Law should be made to the person concerned in written form and upon obtaining his/her signature. The refusal to sign by the person to whom notification is communicated shall be documented on the spot in written form. However, notifications within the scope of Law on Notification no. 7201 shall be made in accordance with the provisions of the said Law.".

Paragraph 5-With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Paragraph 5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from

wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.

Scope of the provisions as interpreted by the ECSR

The wages of all employees should be guaranteed to become subject to deductions under circumstances well defined in legal documents, law, regulation, collective agreement or arbitrament.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1. Legislative amendments and reforms

No amendment has been inroduced to the current legislation within the reference period.

2. Implementation of the legislation

The legislation in force secures the conformity to the provisions of the Revised Social Charter and applications are supervised by the inspectors. In case of practices violating the legislation are found sanctions, notably fines, are imposed which are stipulated by the legislation.

3. Statistical information and data

Through supervisions carried out by labour inspectors of the Ministry of Labour and Social Security, the issue whether regulations with respect to wage cuts, fines envisaged by the Law no. 4857 and by other laws had been observed, have been inspected. Through the supervisions carried out within the reference period, 12 violations of article 38 of the Labour Law, no. 4857 have been found and hence, administrative fines totaling TL 21.276 have been imposed pursuant to article 102 of the same Law.

B) INFORMATION REQUESTED BY THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

1. Employees outside the scope of article 4 of the Labour Law no. 4857.

Provisions of the Labour Law no. 4857 shall not apply to the activities and labour relations mentioned below;

a) maritime and air transportation activities,

b) in workplaces or enterprises employing less than 50 workers (50 included) where agricultural and forestry works are performed,

c) any construction work related to agriculture within the scope of family economy,

d) in works and handicrafts performed at home by members of the family or close relatives up to third degree (third degree included), without any contribution of other people,

e) domestic services,

f) apprentices, without prejudice to the provisions on occupational health and safety,

g) sportsmen,

h) those undergoing rehabilitation,

ı) in workplaces employing 3 persons in accordance with the definition in article 2 of the Law on Artisans and Tradesmen no. 507.

However;

a) Loading and unloading from ships to land and vice versa in coasts or docks and ports,

b) Any work perfomed at ground aviation facilities,

c) Work performed in workshops and factories where argicultural equipments and their parts are produced and agricultural arts are performed,

e) Construction works in agricultural enterprises,

f) Park and garden works open to the public or extension of the workplace,

g) Works related to seafood producers, outside the scope of the Maritime Labour Law and not deemed to be agricultural,

shall be subject to the provisions of this Law.

2. The protection of employees outside the scope of article 4 of the Labour Law no. 4857

Insurance premium according to the Social Insurances and Universal Health Insurance Law no. 5510, income tax according to the Income Tax Law no. 193, stamp duty according to the Stamp Duty Law no. 488, unemployment insurance premium according to the Unemployment Insurance Law no. 4447 are deducted from the wages. Moreover, article 35 of the Labour Law no. 4857, article 32 of the Maritime Labour Law no. 854 and articles 407 and 410 of the Turkish Code of Obligations no. 6078 introduce protective regulations to wages.

Employees outside the scope of the Labour Law are protected against excessive and arbitrary wage cuts by the related provisions of the Turkish Civil Code, the Turkish Code of Obligations and the Enforcement and Bankruptcy Law.

For instance, paragraph 1 of article 83 of the Enforcement and Bankruptcy Law provides that confistication is available only after deduction of the amount that enforcement officer specifies imperative for subsistence of the debtor and his or her family from his or her income and wage of any kind. Therefore, cuts from wages and incomes are allowed only for the sums outside sums required for family's subsistence.

On the other hand, Article 71 of the Procedures for the Collection of Public Receivables Law no. 6183 provides that no cuts shall be made more than one third of any kind of wage and income and more than one tenth of minimum wage.

Rates of cuts from any kind of wages and incomes are specified by the laws under our national legislation and it is not possible to make cuts in excess of those rates.

3. Supplying information on the rules to be observed as regards cuts from wages for alimony claims and on court rulings

Articles 176, 330 and 331 of the Turkish Civil Law respectively regulate payment procedure of compensation and alimony, determination of amount of alimony and changes of situation.

Article 176 clarifies that amount of alimony shall be determined in accordance with the social and economic status of parties and that raising and lowering of amount of alimony could be decided in accordance with the changes in social and economic status.

Article 330 states that amount of alimony shall be determined taking into consideration the needs of children and their affordibility by their parents as well as their living conditions and if available, the children's income.

Article 331 rules that the judge is authorized to re-designate the amount of alimony or completely cancel it on demand if the situation so changes.

As these provisions point out, amount of alimony is determined considering the financial situation of the party who is obliged to pay for it and this amount could be re-determined or even cancelled in case of change in social and economic situations of parties.

On the other hand, given the inadequacy of participation of women in workforce and economic and social situation of our country it is observed that alimonies are predominantly paid to women and children. Women and children take place in so-called "vulnerable groups" in Turkey likewise in other countries, as known.

Since it is obvious that specific circumstances of the countries are taken into consideration by the ECSR, it is presumed that conformity of the situation of our country with the paragraph 5 of article 4 of the Revised European Social Charter will be evaluated in due course.

Article 21 – THE RIGHT OF WORKERS TO BE INFORMED AND CONSULTED WITHIN THE UNDERTAKING

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a) **to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and**

b) **to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.**

Comment of the European Committee of Social Rights

The right of workers and/or their representatives to be informed in all matters about the working environment and to be consulted in good time on proposed decisions which could substantially affect the interests of workers.

The workers should have legal remedies when these rights are not respected. Furthermore, there should be sanctions for the employers who do not fulfill their obligations pursuant to this Article.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1. Legislative amendments and reforms

The amendments made in the relevant legislation are specified below:

The Law on Occupational Health and Safety No. 6331 entered into force by being published in the Official Gazette dated 30.06.2012, No. 28339. With the Article 18-81/b of this Law, a regulation was made with regard to the workers' express their opinions and contribute about the working conditions and working environment. In case of violation of the said Article, an administrative fine is imposed pursuant to Article 26-1/h of the same Law. In Articles 16 and 17 of the Law No. 6331, the obligations of the employer about worker information and training of workers take place and the administrative fine belonging to these Articles are included in Article 26-1 of the same Law.

With the enforcement of the Law on Occupational Health and Safety No. 6331, Article 80 of the Labour Law entitled "Board of Occupational Health and Safety" was repealed. The Article on occupational health and safety was added to Article 22 of the Law No. 6331. The Article on occupational health and safety was guaranteed with the administrative fine in Article 26-1/i.

It was committed that the legislative arrangement which is going to be realized and transferred to the domestic law within the scope of Beneficial Legal Arrangements on Introducing Directive No. 2002/14/EC between 2009-2013 in the Programme for Alignment with the Acquis of Turkey for the years 2007-2013. The studies are going on.

2. Implementation of the legislation

With an official notification sent to the public organizations and institutions with the signature of Mr. Faruk Çelik, Minister of Labour and Social Security, it was requested to ensure the announcements, directives and communique, circular and regulations which are not published in the Official Gazette to be released in the official websites of the relevant institutions and organizations in accordance with the principle of transparency.

It was stipulated that the employer or the employer representative shall be imposed an administrative fine of 485 TL for each worker dismissed contrary to the provisions on collective dismissal. The amount of administrative fine is increased again every year at a rate of valuation.

3. Statistical information and data

There is no statistical information and data concerning the right to be informed and consulted.

B) CONCLUSIONS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

1. Representation of workers

In paragraph (c) of Article 3 of the Law on Occupational Health and Safety No. 6331 entitled “Definitions”, the workers’ representative is defined as “any worker authorized to represent workers in matters such as participating in occupational health and safety related activities, monitoring these activities, requesting measures, making propositions and the like.”

Moreover, in Article 18 of the same Law on consultation with and participation of workers; the employer shall consult workers or representatives authorized by trade unions in enterprises with more than two workers’ representatives or workers’ representatives themselves in the absence of trade union representative to ensure the consultation and participation of workers. This presupposes consultation with regard to occupational health and safety, the right of workers and/or their representatives to make proposals and allowing them to take part in discussions and ensuring their participation, consultation as regards the introduction of new technology and the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers.

According to the afore-mentioned Article, the employer shall ensure that support staff and workers’ representatives shall be consulted in advance with regard to the assignment of occupational physicians, occupational safety specialists and other staff inside the enterprise or the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or enterprise and designation people to be in charge of first aid, firefighting and evacuation; identification of the protective equipment and protective and preventive measures to be introduced as a consequence of risk assessment; prevention of health and safety risks and providing protective services; worker information; the planning of training to be provided to workers. The rights of workers and/or their representatives cannot be restricted since they are entitled to appeal to the authority responsible for safety and health protection at work if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring occupational health and safety.

On the other hand, in the first paragraph of Article 20 of the aforementioned Law entitled “Workers’ Representative”, it is stated that in the event that no person might be elected or chosen to represent workers, the employer shall designate a workers’ representative considering the risks present at work and the number of workers with special attention to balanced participation of workers. The number of representatives shall be identified in the following way:

-One representative for enterprises between two and fifty workers,

-Two representatives for enterprises between fifty-one and one hundred workers,

-Three representatives for enterprises between one hundred one and five hundred workers,

-Four representatives for enterprises between five hundred one and one thousand workers,

-Five representatives for enterprises between one thousand one and two thousand workers,

-Six representatives for enterprises between two thousand one and more workers.

Pursuant to paragraph 2, where there is more than one workers' representative, the chief representative shall be elected among the other workers' representative. In accordance with paragraph 3 of the same Article, workers' representatives shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or to remove sources of danger. As to paragraph 4, workers' representatives may not be placed at a disadvantage because of their respective activities and the employer shall provide them with the necessary means to enable such representatives to exercise their rights and functions. Moreover, in paragraph 5 it is expressed that where there is an authorized trade union represented in the enterprise, the trade union representative shall act as workers' representative.

Those who work in the enterprises where trade unions are organized are represented by the union representative. In the enterprises where the employees are not represented, the employees are infomed within the framework of the current legislation specified below:

a) Article 22 of the Labour Law No. 4857 stipulates that any change by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, may be made only after a written notice is served by him to the employee.

b) In Article 29 of the Labour Law No. 4857 entitled "Collective dismissal", it is specified that when the employer contemplates collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, he shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off.

c) With Article 16 of the Law on Occupational Health and Safety No. 6331, the employer shall inform the workers and workers' representatives about the safety and health risks and protective and preventive measures, legal rights and responsibilities, first-aid, extraordinary situations, disasters, firefighting and the evacuation for the purposes of ensuring and maintaining the occupational health and safety in the enterprises. Besides, with the sub-paragraph (g) of Article 26 of the Law it is specified that an administrative fine shall be imposed for the employer who violates the obligations of informing for each worker. The rights provided for the workers' representatives with Article 20 of the Law on Occupational Health and Safety No. 6331, are free from the number of workers in the enterprise as well as the seniority of the workers' representative.

d) According to the Labour Law No. 4857, before terminating a continual employment contract made for an indefinite period, a notice to the other party must be served by the terminating party. The contract shall then terminate in the case of an employee whose employment has lasted less than six months, at the end of the second week following the serving of notice to the other party; in the case of an employee whose employment has lasted for six months or more but for less than one-and-a-half years, at the end of the fourth week following the serving of notice to the other party; in the case of an

employee whose employment has lasted for one-and-a-half years or more but for less than three years, at the end of the sixth week following the serving of notice to the other party; in the case of an employee whose employment has lasted for more than three years, at the end of the eighth week following the serving of notice to the other party.

e) Pursuant to Labour Law No. 4857, the written consent of the worker should be taken for overtime and working in long periods. In cases of exceeding the normal working periods the employer should inform the worker and take his/her consent.

f) Pursuant to the Regulation on Paid Annual Leave, a Board of Leave is established comprising from 3 persons in total (1 person representing the employer or the employer representative and 2 persons representing the workers) in the enterprises having more than one hundred workers. The employer representative presides the Board. If available, the worker members and their substitutes are elected by the union representatives of the enterprise except the chair of the Board.

The Board of Leave submits the leave schedules which it shall prepare according to the leave requests by the workers and submitted to the Board by the employer or employer representative to the approval of the employer. The Board prepares the leave schedules taking into account the seniority of the workers, their obligations or obstacles in terms of taking the leave in a certain period, smooth functioning and the number of workers. The Board also notifies the employer as well as the relevant worker by examining the requests and complaints of the workers concerning their rights of annual leave. It organizes camps and expeditions, investigates possible measures on this issue and suggests proposals to the employer.

In the workplaces having less than one hundred workers the duties of the Board of Leave are fulfilled by the employer or the employer representative or a person designated by them as well as a representative selected among the workers themselves. In addition, there is no workers' representative in our legislation; there are provisions for the shop stewards in the Law on Trade Unions and Collective Labour Agreements No. 6356. Pursuant to Article 27 of the afore-mentioned Law entitled "Appointment of shop stewards and their functions", a trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards among its members at the workplace in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the workplace does not exceed 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1,000; not more than six, if the number of workers is between 1,001 and 2,000; and, not more than eight, if the number of workers exceeds 2,000. One of the above may be designated as chief representative. The functions of shop stewards appointed by the competent trade union shall continue as long as the competence of the trade union is valid. According to the same Article, if there is a provision in the trade union statute which provides for selection of shop stewards through election, the selected member shall be appointed as the shop steward. The duties of shop steward and chief representative, on condition that they are limited only to the workplace, shall be to hear workers' requests and handle their grievances; to maintain cooperation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist in the application of working conditions provided for in labour legislation and collective labour

agreements. Shop stewards shall carry out their duties on condition that their own work and the work discipline at the workplace are not hindered. Shop stewards shall be provided with appropriates means to carry out their duties in the workplace quickly and efficiently.

The provisions for the workplace trade union representatives in the public sector were regulated in Article 23 of the Law on Public Servants Trade Unions and Collective Labour Agreement No.4688 entitled “Workplace trade union representatives and trade union workplace representatives.” Pursuant to this Article, the trade union with the highest number of members registered in the workplaces shall be authorized to elect the workplace trade union representative. Trade unions undertaking activities in a workplace other than the one with the highest number of members registered may determine trade union workplace representatives from the workplace to coordinate trade union activities which are within the scope of this Law. Workplace trade union representatives are determined from the workplace in order to ensure the communication between public employee and employer and to listen to the problems of public employees related to employer and workplace and hand these problems up to relevant authorities. Trade union representatives shall perform their duties in the workplace for a period of four hours a week and they shall be considered on leave during this period. The public employer shall provide, in a manner that does not hinder management and services, the means that facilitate the trade union representatives’ carrying out their activities during and out of working hours.

On the other hand, public servants working in public institutions and organisations can express their opinions about the matters on working life in Public Employees’ Advisory Board and in Administrative Boards which were established with the Articles 21 and 22 of the above-mentioned Law.

Public Employees’ Advisory Board is composed, under the chairmanship of the Minister to which the State Personnel Presidency is affiliated, of the chairmen of the three confederations who have the highest number of members, of the chairman of the public employees trade union which has the most members in each service branch and the head of the State Personnel Presidency with the aim of developing social dialogue between trade unions and confederations of the public servants and public administrations, evaluating legislation concerning the public servants and the practices of public management, carrying out joint studies to develop a well-functioning management structure, ensuring the public employees to participate in the management and finding solutions to the problems regarding public administration. According to the agenda, the authorized persons of the other state institutions and organizations and the representatives of the authorized trade unions may be invited to participate in the Board.

Administrative boards of establishments are formed to express opinions on the working conditions of public servants and for equal implementation of laws on public servants; these boards are composed in equal numbers of public employer representatives and those to be determined by the trade union that include the most members in its composition. Administrative boards of establishments convene two times in a year.

Furthermore, within the scope of Article 42 of the Law on Public Servants Trade Unions and Collective Labour Agreement No. 4688, public servants trade unions are also invited to the studies which the Ministry of Finance, the Ministry of Labour and Social Security and the State Personnel Presidency will participate in order to monitor the application.

2. The right of workers to be informed and consulted in all subjects

In accordance with Article 22 of the Labour Law No. 4857 entitled “Change in Working Conditions and Termination of the Contract”, any change by the employer in working conditions based on the employment contract, on the rules of work which are attached to the contract and on similar sources or workplace practices, may be made only after a written notice is served by him to the employee.

On the other hand, pursuant to Article 29 of the Labour Law No. 4857 entitled “Collective dismissal”, when the employer contemplates collective dismissals for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, he shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off. In the same Article it was stated that consultations with union shop-stewards to take place after the said notification shall deal with measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimize their adverse effects on the workers concerned and a document showing that the said consultations have been held shall be drawn up at the end of the meeting.

3.The right of workers to resort to the jurisdiction in case of violation of the right to be informed and consulted

Resorting to the jurisdiction against every action and operation of the management is under constitutional guarantee. Necessary procedures are fulfilled according to judicial decisions.

Pursuant to Article 22 of the Labour Law No. 4857, changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. If the employee does not accept the offer for change within this period, the employer may terminate the employment contract by respecting the term of notice, provided that he indicates in written form that the proposed change is based on a valid reason or there is another valid reason for termination. In this case the employee may file suit according to the provisions of Articles 17 and 21.

Administrative fine is stipulated in case there is no conformity with the provisions regarding the

right to be informed and consulted that exists in our legislation. For instance, a fine of 485 TL has been stipulated for each worker the employer or the employer representative dismissed against the provisions in Article 29 of the Labour Law No. 4857.

Besides, pursuant to Article 16 of the Law on Occupational Health and Safety No. 6331 entitled “Administrative fines and enforcement”, for the employer who violates the obligations laid down in Article 16 per each uninformed worker and for the employer who violates the provisions on consultation with and participation of workers in Article 18, and also for the employer who does not fulfill the obligations in paragraphs 1 and 4 of Article 20, an administrative fine of 1078 TL and for the employer who does not fulfill the obligations in paragraph 3 an administrative fine of 1617 TL is stipulated. The

abovementioned amounts of fine are increased every year at a rate of valuation.

With the Law on Occupational Health and Safety No. 6356, the guarantee of reemployment has been introduced in case of termination of contract due to the representation duty of the workplace shop steward. However, an employer shall always terminate the employment contract of shop stewards where there is a just cause for termination.

In accordance with the Law No. 6356, an employer shall not terminate the employment contract of shop stewards unless there is a just cause for termination and he indicates this clearly and precisely. The shop steward or the trade union of which he is a member shall have the right to apply to the competent court within one month of the date when the notice of termination is communicated to him. The court shall apply fast-hearing procedures. In the event of an appeal of the decision given by the court, the decision of the Supreme Court shall be final.

In accordance with the Law No. 6356, if the court decides that the trade union representative is to be reinstated, the termination shall be annulled and the employer shall pay his full wages and all other benefits between the termination and final decision date. On condition that the trade union representative applies within six working days following the final decision of reinstatement, and in the event that he is not reinstated within six working days, his wage and other benefits shall continue to be paid by taking into account that his employment relation is still continuing. This provision shall likewise apply in the case of a new appointment as shop steward.

In accordance with the Law No. 6356, unless there is a written consent of the shop steward, the employer shall not change the workplace of the shop steward or shall not make a drastic change in his work. Otherwise, the change shall be considered as void.

Pursuant to Law No. 4688, public employer cannot relocate workplace trade union representative, trade union’s workplace representative, provincial and district representative of the trade union and trade union and branch managers unless the fact is clearly and precisely indicated.

Article 22 – THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organization and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organization of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

Commment of the European Committee of Social Rights

The right of the employees and/or their representatives in the private and public sector enterprises to participate in the process of decision making and the supervision of monitoring the regulations in all matters specified in Article 22.

In case of uncorformity with these rights the employees sould have legal remedies. Moreover, pursuant to this Article, there should be sanctions for the employers who do not fulfil their responsibilities.

A) INFORMATION AND DATA CONCERNING THE DEVELOPMENTS DURING THE REFERENCE PERIOD

1.Legislative amendments and reforms

Amendments related to the legislation have been illustrated below:

a) The Law on Occupational Health and Safety No. 6331

The Law on Occupational Health and Safety No. 6331 has entered into force upon its issuance on the Official Gazette No. 28339 dated 30.06.2012. The said Law introducing significant amendments and innovations to our legislation will be implemented to all the workplaces and occupations belonging to the public and private sectors, to employers and vice-employers of these workplaces to all their employees including apprentices and interns regardless of the areas in which they perform activities. The Law introduces the liability of informing employees and employee representatives, receiving opinions and views of employees in subjects related to health and security at work and ensuring their participation, assigning employee representative with an election among the employees in number designated under the Law or with appointment in cases when it is not possible to determine the representatives with an election in accordance with Article 22 of Social Charter and in case of non-compliance with these liabilities, administrative fine is envisaged.

Hence, in accordance with Article 16 of the Law entitled “Informing Employees” the employer is liable to inform the employers and employees on the following subjects taking into consideration the properties of workplaces in order to ensure and sustain occupational health and safety in the workplace.

a-) Health and security risks that could be observed in the workplace, preventive and protective measures

b-) Legal rights and responsibilities related to them

c-) First aid, extraordinary situations, persons assigned to address disasters and undertake firefighting and evacuation

According to the same Article, the employer moreover is liable to inform right away all the employees under exposure and likely to be under exposure to close and severe dangers stated in Article 12 of the Law No. 6331 entitled “Evacuation” about measures taken and to be taken against dangers and risks arising from them.

Moreover Article 18 of the same Law entitled “Receiving the opinions and views of the workers and ensuring their participation” provides that;

“(1) Employer provides the following possibilities in the area of receiving opinions and enabling participation, to employees or in workplaces with two or more employee representatives
if any to entitled trade union representatives to workplaces if not to employee representatives.

a) Receiving their opinions in matters related to health and security at work, recognition of the right to propose an offer and to enable participations and partakes in the negotiations in this context
b) Receiving their opinions in subjects such as application of new technologies, working equipment to be selected, impacts of working environment and conditions to the health and safety of the workers

(2) Employers ensure that opinions and views of support personnel and employee representatives are communicated to them.

a) workplace physician to be assigned within the workplace or to benefit from the services of outside the workplace, work safety expert and other personnel and assigning of persons for first aid, firefighting and evacuations

b) Conducting risk assessment specification of protective and preventive measures to be taken and protective equipment and hardware

c) Prevention of health and security risks and running protective services

d) Informing the employees

e) Planning the education of employees

(3) Since workers refer to competent authorities when measures taken in the workplace for health and safety are inadequate or during inspections, their rights cannot be restricted.

In Article 20 of the same Law entitled “Employee representative” introduced employer the liability of assigning employee representatives at certain numbers through elections among the employees or otherwise through appointing them taking into account the number of employees and risks in various sections of the workplaces with 2 or more employees while simultaneously observing the balanced breakdown of such representatives. Number of employees is again mentioned in the same Article.

In case when there is more than one employee representative, head of representatives is determined with an election to be held among the employees. Employee representatives have the right to demand the employer to take necessary precautions or to make suggestions, for elimination of the source of danger or for reduction of the risk arising from the danger. Rights of employee representatives and support personnel cannot be restricted on the grounds of fulfilling their duties and they are provided the necessary possibilities for them to carry out their duties by the employer. If there is an entitled trade union operating in the workplace, then trade union representatives to the workplace do serve as employee representative at the same time. Employee representatives have been defined as “Employees entitled to participate the studies regarding occupational health and safety, to follow up the studies, to demand necessary precautions being taken, to propose offers and to represent the employees in similar matters” in Article 3 of the Law No. 6331 entitled “Descriptions”.

Article 22 of the said Law entitled “Board of Occupational Health and Safety” introduced employers the liability of assembling boards to conduct studies on occupational health and safety in workplaces with 50 or more than 50 employees and where continuous work lasting more than 6 months are performed. In this regard the employer applies board decisions that comply with the legislation on occupational health and safety. In whichever workplaces boards of occupational health and safety to conduct studies on occupational health and safety will be established, formation of these boards, their duties and mandates, working procedures and principles have been designated under Regulation on Boards of Occupational Health and Safety.

In addition to all these, liability of conducting risk assessment in the workplace has been imposed on the employer in accordance with the said Law and principles and procedures of risk assessment to be performed in terms of occupational health and safety have been designated under Regulation on Risk Assessment of Occupational Health and Safety.

In subparagraph (b) of paragraph 1 of Article 18 of this Law, it has been regulated that employees communicate their reflections on working conditions and working environment in the workplace and they extend their contributions. In case of non-compliance with the said Law article, administrative fine is implemented in accordance with subparagraph (h) of paragraph 1 of Article 26 of the same Law.

b) Article 80 of the Labour Law entitled “Board of Occupational Health and Safety”

With entry into force of the Law on Occupational Health and Safety No. 6331, Article 80 of Labour Act entitled “Board of Occupational Health and Safety” has been annulled and has been regulated under 22nd article of the Law no 6331.

c) Regulation on Boards of Occupational Health and Safety

Regulation on Boards of Occupational Health and Safety designating in whichever workplaces boards of occupational health and safety to conduct studies on occupational health and safety will be established, formation of these boards, their duties and mandates, working procedures and principles has been issued on Official Gazette No. 28512, dated 29 December 2012.

d) Regulation on Risk Assessment of Occupational Health and Safety

Regulation on Risk Assessment of Occupational Health and Safety specifying principles and procedures of risk assessment to be conducted in terms of health and security at work in workplaces principles has been issued on Official Gazette No. 28512, dated 29 December 2012.

e) Notice on Qualifications of Employee Representatives as regards Occupational Health and Safety and on Their Election Procedures and Principles

Notice on Qualifications of Employee Representatives as regards Occupational Health and Safety and on Their Election Procedures and Principles designating procedures and principles of election and qualifications of representatives to be assigned under Article 20 of the Law No. 6331 or their appointment has been issued on Official Gazette No. 28750, dated 29 August 2013.

2. Implementation of the legislation

With a correspondence submitted to public institutions and organizations with the signature of Minister of Labour and Social Security, it has been demanded that "announcements, directives and notices, circulars and regulations that are not issued on Official Gazette are publicised on the official websites of related institutions and organizations in accordance with the principle of transparency."

3. Statistical information and data

There is no quantitative information and data on the subject in the existing statistical database.

B) INFORMATION REQUESTED BY THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

1-Scope of the right to participation in the improvement and regulation of working conditions and working environment

It is possible to organize meetings with entitled trade union representatives for collective agreements on subjects such as specification and improvement of working conditions, organization of the work and working environment, protection of health and security at work in workplace, organization of social services and social and sociocultural conveniences in the workplace as mentioned above.

In accordance with Law on Public Employees and Collective Agreement No. 4688, trade union representative refers to the public employee elected from the workplace by trade union which has the highest number of registered members in that workplace, workplace representative to trade union on the other hand refers to public employee elected by every trade union other than the one which has highest number of registered members in that workplace from it.

Trade union representatives to workplace perform the duties of listening to public employee's problems about workplace or the employer, conveying these problems to related authorities and maintaining the communication between public employees and employer. Trade union representatives to workplace perform these duties at workplace during four hours every week. Workplaces of trade union representatives to workplace and workplace representative to trade union cannot be changed unless its reason is stated clearly and concretely by the public employer.

In Article 22 of the Law on Public Employees and Collective Agreement No. 4688, institution administration boards have been assembled from representatives elected among trade union members, and by vice-employer and trade union for acknowledgement of thoughts about equal exercise of laws on public employees and working conditions of public employees at institutional level. These boards convene two times a year and deliberate over above mentioned matters.

Article 27 of The Law on Trade Unions and Collective Labour Agreement No. 6356 entitled “Appointment and duties of trade union representatives to workplace” regulates the appointment and duties of trade union representative to workplace. Trade Union representative to workplace has some duties regarding informing employees, covering workers without membership to trade union in the workplace and arising from the legislation other than representation of trade union.

In third paragraph of the related article of The Law on Trade Unions and Collective Labour Agreement No. 6356, duties of trade union representatives to workplace have been regulated for informing workers have been regulated. According to this article duties of trade union representative to workplace are not just limited to activities between trade union and their members taking record of demands of all workers in the workplace it has connection with whether they are its member or not, to resolve their complaints, to ensure the continuation of working cohesion, collaboration and working peace between workers and employers, to observe the rights and benefits of the workers and to facilitate the application of working conditions envisaged in labour acts and collective labour agreements.

On the other hand, they are tasked with ensuring consensus among employees in areas such as organization of works, working environment and social services with collective labour agreements. For instance, in collective labour agreements between Trade Union of Metal Industrialists (MESS) acting under Turkish Confederation of Employers’ Trade Unions (TİSK) and addressed trade unions duties of trade union representatives to workplaces have been determined as follows:

-to ensure the continuation of working cohesion, collaboration and working peace between workers and employers

-to help settlement of disagreements between workers and employers in compliance with the procedure applied for complaints in this agreement, legislature and collective labour agreements

-to follow the implementation of the agreement and to prevent illegal actions and disputes.

The basics on which to receive the opinion of head representative in determination of menus and selection of working outfit and shoes and cleaning equipment and materials were regulated. Similar regulations also exist in collective labour agreements in other sectors.

2. Board of Occupational Health and Safety

In Article 22 of the Law No. 6331 provides the formation of boards of occupational health and safety in all workplaces with 50 or more than 50 employees where continuous works lasting more than 6 months are performed. As for workplaces with less than 50 employees where there is no such board, how the workers will take part in decisions regarding occupational health and safety is regulated under Article 18 of the Law No. 6331.

Within the framework of this article regulated entitled “Receiving the opinions of employees and ensuring their participation” employees and employee representatives are enabled the following possibilities;

-Receiving opinions in matters related to occupational health and safety, recognition of the right to propose an offer, taking part in the meetings in this area and ensuring participations in such meetings,

-Receiving opinions in areas such as application of new technologies, working equipment to be selected, impacts of working environment and conditions on the health and safety of workers

Under the same Article; employer ensures that support personnel and employee representatives convey their reflections on the following issues in advance,

-Assigning of workplace physician within the workplace or to benefit from the services of outside the workplace, work safety expert and other personnel and assigning of persons for first aid, firefighting and evacuations

-Conducting risk assessment specification of protective and preventive measures to be taken and protective equipment and hardware

-Prevention of health and security risks and running protective services

-Informing the employees

-Planning the education of employees

Since workers refer to competent authorities when measures taken in the workplace for health and security are inadequate or during inspections, their rights cannot be restricted.

3. Socio-cultural services

There is no regulation regarding the matter in our legislation. However, these matters can possibly be regulated in collective labour agreements.

4. Regulation of working conditions and working environment

Right of referring to the judiciary against any kind of activity and proceeding by the administration is secured under the constitution and necessary procedure is applied according to the judiciary decisions.

In the areas of employees right to referring to the judiciary in case of violation of the right to improvement and regulation of working conditions and working environment in the workplace or sanctions to be imposed upon employers violating this right, it is possible to apply to the judiciary in accordance with the provisions of collective labour agreement between entitled trade union representatives and employers.

According to the Law on Occupational Health and Safety No. 6331, employees have the right to apply to the competent authorities in case of their being denied the right to participation. Paragraph (h) of Article 26 of the Law envisages that the employers who do not fulfil their liabilities as for allowing the employees the right to participation will be charged with administrative fines. Under paragraph 3 of Article 18 of the same Law it is determined that rights of employees and employee representatives cannot be restricted since they refer to competent authorities during inspection or in cases when measures of occupational health and safety in workplaces are inadequate.

ARTICLE 26 – THE RIGHT TO DIGNITY AT WORK

With a view to ensuring the effective exercise of the right of all workers to protection of

their dignity at work, the Parties undertake,

Article 26 Paragraph 1

the Parties undertake, in consultation with employers' and workers' organizations, to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

Scope of the provisions as interpreted by the ESCR

This concerns forms of behaviour deemed to constitute sexual harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against sexual harassment. It also concerns the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent sexual harassment.

A- DEVELOPMENTS IN THE REPORTING PERIOD

1- LEGAL FRAMEWORK

During the reporting period there has not been any legislative amendments.

2- IMPLEMENTATION

Sexual harassment is regulated within the term of crime in the "sexual harassment" sideheaded Article 105 of the Turkish Penal Code No. 5237. Accordingly, in case the person performing such an act is a public officer, she/he will be taken under the same processing, on the other hand in case she/he will be sentenced, than she/he can be laid off. This Article forsees that a person subject to sexual harassment by another person, the person performing such an act can be sentenced to punishment from three to two years upon complaint of the victim and in the second paragraph is forseen that in case of commission of these offenses by using the advantage of working in the same place with the victim, the punishment to be imposed according to the first paragraph is increased by one half and if the victim is obliged to leave the business place for this reason, the punishment to be imposed may not be less than one year.

Nevertheless, the sorts of disciplinary punishment and the acts and conditions to be penalized are regulated in the Article 125 of the Civil Servants Law No. 657. According to this Article "not acting within the framework of public moral and good manners and the writing and drawing of signs, pictures or the like within this context"

are regarded as acts and conditions which need reprimand. On the other hand, “taking disgraceful and inglorious actions which are not complying in character and extent with the title of sivil servants” are considered as acts and conditions for dismissal from sivil service.

Besides, the regulations regarding the right of dignity at work, are forseen in the related paragraphs of the Article 24 entitled “employee’s right to break the contract for just cause” of the Labour Act of Turkey with No. 4857. Within the framework of the right of dignity at work of the employer is the right to break the contract for just causes regulated under the title “For immoral, dishonourable or malicious conduct or other similar behaviour” of the Article 24 as:

- If the employer is guilty of any speech or action constituting an offence against the honour or reputation of the employee or a member of the employee’s family, or if she/he harasses the employee sexually,
- If the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honour;
- If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct.

In the Article 26 of the same Act is regulated that the employer who has terminated the contract within the forseen period is entitled to claim compensation from the other party.

Nevertheless the Turkish Code of Obligations No. 6098 regulates in:

- The first paragraph of the “liability” sideheaded Article 49 that, who harms somebody in consequence of a “quasi delict” and unlawful legal acts, has to indemnify this person for this loss, and in
- The first paragraph of the “protection of the personality of the employee” sideheaded Article 417 that, the employer has to protect and show respect to the personality of the employee, and has to establish order in the workplace based on the principle of honesty, meanwhile has especially to take all the necessary measures to protect the employees from psychological and sexual harassment and to protect those currently harassed in this context from more suffer.

3- STATISTICS AND OTHER INFORMATION

There is any information available concerning this matter.

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

1. The definition of the term "Third person" and the liability of the employer

In the subparagraph (c) of the second paragraph with the title "For immoral, dishonourable or malicious conduct or other similar behaviour" of the Article 24 of the Turkish Labour Act No. 4857 is regulating that, the employee is entitled to break the contract, if, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, and adequate measures were not taken although the employer was informed of such conduct. We can trace from this Article where it is mentioned beside the term "another employee" also the term "third persons", that it is aimed herewith that the victim is protected also against the harassment by the independent employer, independent employee, visitor, customer and others.

2. The right of going to law

According to our legislation has the victim the right of making a complaint for the purpose of opening a criminal case, the employee has also the right to break the contract for just clause, the victim is entitled to request the prevention against any sexual harassment, the calling off of a proceeding onset, the identification of the illegality of an onset which is already over but its effects are still-continuing, material and moral indemnities and in the case there is any undeserved gain that it will be given to herself/himself pursuant to the principle of "negotiorum gestio".

3. To prove the claim of sexual harassment

According to our legislation the employee claiming of being sexualy harassed, has to prove this claim through medical report, witness statement, registration file and showing the situations unexpected in daily life. The Court of Appeal decisions is also forseing that a case is acknowledged as proven after considering the ordinary courses of events, rules of experience.

4. The compensation of pecuniary and non-pecuniary damages of victims of sexual harassment

The regulations mentioned above in the Paragraph B) 2.are also applicable in this context. In this regard in the Article 417 of the Code of Obligations is regulating further that, "Including the regulations mentioned above, the compensation by the employer of the damages -caused by her/his conduct contravening the law and contract- such as the death of the employee, the damage of the employees' physical integrity or the violation of her/his personal rights, are subject to the provisions of responsibility arising from the contradiction to the contract."

5. Consciousness-raising activities on the subject of sexual harassment in the workplace

There is any regulation concerning this matter.

Article 26 Paragraph 2

the Parties undertake, in consultation with employers' and workers' organizations, to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Scope of the provisions as interpreted by the ESCR

This concerns forms of behaviour deemed to constitute psychological harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against psychological harassment. It also concerns legal protection against psychological harassment and the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent psychological harassment.

A- DEVELOPMENTS DURING THE REPORTING PERIOD

1- LEGAL FRAMEWORK

During the reporting period has not been any legislative amendments.

2- IMPLEMENTATION

On the purpose of prevention of psychological harassment in the work place has been issued the circular letter of the Prime Ministry with no. 2011/2 and published in the Official Gazette no. 27879 and dated 19.05.2011. In this circular letter is stated that, the prevention of an employee from intentional and systematic humiliation, belittlement, exclusion, violation of personality and honor, abuse, daunt or the like psychological harassments, is either of importance for occupational health and safety or for enhancing labour peace.

According to the mentioned circular, is the struggle with psychological harassment primarily under the responsibility of the employer and the employer has to take all the necessary measures to prevent the worker from harassment. It will be make point of inserting preventive provisions on collective agreements in context of the prevention of psychological harassment in the workplace. In the enhancement of the struggle with psychological harassment is provided help and assistance by psychologists through the telephone line "ALO 170". In this framework, first of all have been the psychologists educated on the issue, then they have been charged with assisting the persons calling the above mentioned line. This psychologists have started to fulfil the duties of informing those people about the matter, giving psychological support to those thinking of being psychologicaly harassed, guiding them, listening to their complaints.

Pursuant to the Article 5 of the mentioned circular is the "Council for Struggle with Psychological Harassment" constituted within the body of the Ministry of Labour and Social Security through the participation of the State Personnel Presidency, non-

governmental organizations and related parties, for the observation, evaluation of the cases of workers who have been psychological harassed and for the development of preventive policies. According to the circular has the personnel of inspection to acomplish the examination of the claims on psychological harassment as soon as possible. Nevertheless, it is herewith ensured that it is taken the highest care in the protection of the individual privacy on the works and proceedings within the framework of the claims of psychological harassment.

As the result of meetings and works within the body of the mentioned Council through the participation of the related institutions and confederations has been prepared the "Action Plan on the Application of the Circular on the Prevention of Psychological Harassment in the Work Place (2012-2014)".

This Action Plan comprises the four priority fields undermentioned:

- Institutional Capacity Works for the Prevention of Psychological Harassment in the Workplace,
- Works on Education and Raising of Awareness on the Prevention of Psychological Harassment in the Workplace,
- Data Acquisition, Observation and Evaluation Works for the Prevention of Psychological Harassment in the Workplace,
- Legislation Development Works for the Prevention of Psychological Harassment in the Workplace

On the other hand, it is assumed that activities within the framework of "mobbing" will delegate criminal and judical liabilities mentioned below:

A) The regulation in the Article 13 titled "Right to Abstain from Work" of the Law on Occupational Health and Safety with No. 6331 that "Where the necessary measures are not taken despite the requests by workers, workers under labour contract might terminate their employment contract in accordance with the provisions of the law applicable to them. As for the workers under collective bargaining agreement, the abstention period as defined in this article shall be deemed as actual work time." can be appraised within this context.

B) The regulations in the Article 25 with the title of "Guarantee of Union Freedoms" of the Law on Trade Unions and Collective Labour Agreements with No. 6356 which are noted below can be expressed as regulations in our legislation and in practice:

"(1) The recruitment of workers shall not be made subject to any condition as to their joining or refraining from joining a given trade union, their remaining a member of or withdrawing from a given trade union or their membership or non-membership of a trade union.

(2) The employer shall not discriminate between workers who are members of a trade union and those who are not, or those who are members of another trade union, with respect to working conditions or termination of employment. The provisions of the collective labour agreement with respect to wages, bonuses, premiums and money-related social benefits shall be exceptions.

(3) No worker shall be dismissed or discriminated against on account of her/his membership or non-membership in a trade union, her/his participation in the activities of trade unions or workers'organisations outside his hours of work or during hours of work with the employer's permission.

(4) If an employer fails to observe the provisions set out in the above paragraphs apart from the termination, she/he shall be liable to pay union compensation which shall not be less than the worker's annual wage.

(5) In case of termination of contract of employment for reasons of trade union activities, a worker shall have the right to apply to the court as provided in the Articles 18, 20 and 21 of the Labour Law No. 4857. Where it has been determined that the contract of employment has been terminated for reasons of trade union activities, union compensation shall be ordered independent of the requierement of application of the worker and the employer's granting or refusing her/him permission to restart work in accordance with Article 21 of the Law No. 4857. However, in case the worker is not allowed to start work, the compensation specified in the first paragraph of Article 21 of this Law. No. 4857 shall not apply. Non-application to a court pursuant to the aforementioned provisions of the Law No. 4857 shall not be an obstacle for the worker to claim union compensation separately.

(6) In case brought to the court with the claim that contract of employment has been terminated because of trade union affiliation, the burden of proof to prove the reason for termination shall lie with the employer. A worker who claims that termination is not based on the reason the employer has claimed, shall bear the burden of proof to prove that the reason for termination has been union affiliation.

(7) Except for termination, in the event of a claim that the employer discriminates because of union affiliation, the burden of proof shall be on the worker. However, if a worker shows the existence of a situation indicating strongly that discrimination has been made because of union affiliation, the employer shall be obliged to prove the reasons for her/his conduct.

(8) Any provision contained in the collective labour agreement and in the contract of employment which is contrary to the provisions set out above shall be void.

(9) The worker shall retain all the rights conferred on him by the labour legislation and other enactments."

Properly to the Article 25 with the title "Guarantee of Union Freedoms" of the Law on Trade Unions and Collective Labour Agreements with No. 6356, if an employer is discriminated for reasons of trade union activities, than it will be ruled to compensation which shall not be less than the worker's annual wage. Wtihin this framework, in accordance to the Paragraph 6 of the Article 5 titled "The principle of Equal Treatment" of the Act No. 4857, it can be paid the employee compensation up his (her) four months' wages for the discrimination. However, somebody cannot become entitled to take both union compensation and compensation for discrimination in the same time; however the union compensation is higher than the other.

C) Although there is in the Labour Act No. 4857 any regulation on the term "mobbing" in general, especially the Articles 24/II and 25/II are regulating the issue indirectly under the title of "For immoral, dishonourable or malicious conduct or other similar behavior".

On the other hand, in the Article 5 of the Labour Act No. 4857 is regulated the principle of equal treatment and the sanctions to be imposed in case of the violation of this provision, accordingly it is forseen not to discriminate in the employment relationship within the framework of language, race, sex, political opinion, philosophical belief, religion and confessions and similar reasons and in the case of the occurance of such a discrimination it is also regulated that "the employee is entitled to take a compensation up to her/his four months' wages for the discrimination and is also entitled to claim the rights she/he has been deprived of." within the framework of a compensation for discrimination. The activities of the employer in the context of mobbing, will also mean a discrimination between the workers and that the employee is contravening the obligation of equal treatment through her/his systematically different and adversely conducts to a worker.

D) According to the Paragraph 1 of the Article 2 with the title "Good Faith" of the Turkish Civil Code, "Every person is bound to exercise his rights and fulfill her/his obligations according to the principles of good faith" and according to the Article 3 with the title "bona fides", "Bona fides is presumed whenever the existence of a legal position is dependent on the observance of good faith.". Employees and employers has to conduct each other during their employment relationship within the framework of the principles of good faith and bona fides mentioned in this Articles of the Code, nevertheless according to the Articles 23 and 24 which are regulating the protection of the personality, has the employer to compensate the employee whose personal rights have been violated and who was mistreated.

E) The Turkish Penal Code with No. 5237 forsees;

- In the Paragraph 1 of the Article 117 titled "Violation of freedom of work and labour" that, any person who violates freedom of work and labour by using violence or threat or performing an act contrary to the law, is sentenced to imprisonment from six months to two years and imposition of punitive fine upon complaint of the victim.
- In the Paragraph 1 of the Article 125 with the title of "Defamation" that, any person who acts with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine.

F) Under the title "1. Conditions, a. Fair causes" of the Article 435 of the "Part IV. Immediate termination" of the Code of Obligations with No. 6098 is forseen that, "Each of the parties may terminate the contract immediately for rightful reasons. The party terminating the contract is obliged to advice the reason for termination in writing.

All circumstances and conditions where the party who terminates the contract is not anticipated to continue the service relationship according to rules of honesty are deemed rightful reasons."

3- STATISTICS AND OTHER INFORMATION

On the basis of the conception of preventive inspection is the Turkish Labour Inspection Board of the Ministry of Labour and Social Security inspecting within the context of psychological harassment whether it is complied with the regulations of the Labour Act with no. 4857 and the other related Acts or not; in the inspections is given weight to education, communication and enlightenment -which are also comprising

social partners. Nevertheless during the inspections it is also considered whether it is complied with the regulations forseen in the Article 5 of the Act no. 4857 under the title “Principle of Equal Treatment” or not. In case of the violation of the Article 99/a of the mentioned Act it can be enforced administrative fine.

Within the reference period it has been observed that this Article was breached 18 times and it has been enforced pursuant to the Article 99/a an admnistrative fine in the total amount of 15.630-, TL.

There are besides mobbing-related academic studies also publications of labour and employers confederations. Nevertheless the Center of Education and Research of the Ministry of Labour and Social Security has organized a panel and workshop with the title “1. Psychological Harassment (Mobbing) in Working Life”. In the panel part it has been given information on mobbing, whereby in the workshop part it has been tackled “Aproach and Suggestions on Mobbing from the point of Working Psychology”, “Individual and Institutional Struggle within the Framework of Mobbing”, “Legal Solution Seeking in the Struggle with Mobbing” and “The role of NGO’s in the Struggle with Mobbing”. Furthermore the outcomes of the workshop are forseen to be summarized in a book.

B- RESPONSES TO THE FURTHER INFORMATION REQUESTS AND CRITICISMS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

1. The definition of the term “Third person” and the liability of the employer

The regulations mentioned under Paragraph 1 are also applicable under this title.

2. The right of going to law

The regulations mentioned under the part “Implementation” are also applicable within the framework of this title.

3 To prove the claim of psychological harassment

The regulations mentioned under Paragraph 1 are also applicable under this title.

4. The compensation of pecuniary and non-pecuniary damages of victims of psychological harassment

The regulations mentioned under Paragraph 1 are also applicable under this title.

5. Consciousness-raising activities on the Subject of psychological harassment in the workplace

To enhance awareness in the public administration it is given education on psychological harassment in workplace by the State Personnel Presidency in the provinces for the mid-level and high-level managers (47 cities and 2.258 person).

This kind of educations given by the State Personnel Presidency on psychological harassment (mobbing) will be continuing for raising the consciousness in the public administration. In case the requests for education in this issue by public agencies and institutions will continue, then it will be pursued to put educational experts in charge by the before mentioned Presidency. Nevertheless, after making amendments in the Regulation on Principles of Progress in Job in Public Agencies and Institutions and of Change of the Title, it is also planned to give education to the heads, department managers and personnel on the same rank who are appointed through making progress in job- before they take office.

ARTICLE 28 – RIGHT OF WORKER REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE AFFORDED TO THEM

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognized as such under national legislation or practice"

Scope of the provision as interpreted by the ECSR

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.

The term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.

The facilities to be provided may include for example paid time off to represent workers, financial contributions to the workers' council, the use of premises and materials for the operation of the workers' council, etc.

A) Information and Data Relating to the Developments During the Reporting Period

1. Legislation Amendments and Reforms

Amendments made in the legislation concerned in the reporting period have been indicated below.

The Law on Occupational Health and Safety No. 6331 ("**Law No.6331**") covering all employees and workplaces including public sector in order to provide occupational health and safety in workplaces and improve the current health and safety requirements has been published in the Official Gazette No. 28339 dated 30 June 2012. Due to the scope of the labour law no. 4857 is limited with the employers and

the workers employed under an employment contract, a significant part of the employees, mainly the civil servants working in the public institutions and organizations, were not included in the scope of the legislation relating the occupational health and safety. At the same time due to the limitations on the number of workers, it could not be possible for the micro and small enterprises in which the high rate of work accidents were seen, to benefit from the professional occupational health and safety services fully.

All jobs and workplaces in the public and private sector excluded with the limited exceptions of the Occupational Health and Safety Law, employers of these workplaces and their representatives, all workers including apprentices and interns regardless of their field of activity are covered. Thus, all employees regardless the number of employees in the workplace and the type of workplaces, have the rights regarding occupational health and safety.

The obligation of risk assessment which is the fundamental instrument of protective approach is imposed to all workplaces. In this context, the employers are ensured to take the necessary measures against the possible risks by identifying the hazards with the employees at every stage of work continuously which exist at work or the workplace. In addition, at the workplaces classified as very hazardous, mining, metal and construction workplaces, workplaces where hazardous chemicals are used and the workplaces where serious industrial accidents may take place, the operations shall be stopped in case of a lack of risk assessment.

In order to provide occupational health and safety services, it is obligatory to employ occupational safety specialist, occupational physician and other health staff. In order to provide more effective services, workplaces are segregated into hazard classes by taking into account the fundamental work carried out.

Occupational health and security professionals have the right to declare the issues about occupational health and safety to the employer and to notify the ministry about critical situations in case the employer does not take necessary precautions.

Ministry will provide financial support in providing occupational health and safety services to micro sized enterprises.

The concept of “workers’ representative” who is someone authorised to represent workers in matters such as occupational health and safety related issues, is introduced.

Workers are ensured to participate the decision making activities about the occupational health and safety issues.

It has been ensured to provide occupational health and safety coordination in the places where the workplaces are gathered.

In order to detect the vulnerabilities of workers and determine risky situations an obligation to ensure that workers receive health surveillance has been brought.

The employer shall set up an occupational health and safety committee in enterprises where a minimum of fifty employees are employed and permanent work is performed for more than six months.

In case of hazard, it has been bestowed the right to avoidance of work to the workers.

The provision that the all employers should prepare emergency case plan for situations such as first aid, firefighting, evacuation of individuals, serious and imminent danger.

It has been brought the obligation to employers to give information to the workers about occupational health and safety and to provide education.

Trade Union and Collective Labour Agreement Law no. 6356 has been adopted in 18.10.2012 and entered into force in 07.11.2012. With the entry into force of the said Law, Trade Union Law no. 2821 and Collective Labour Agreement Strike and Lock out Law no. 2822 were repealed. The guarantees of the workplace trade union representatives and executive board members have been increased in the new law no. 6356.

Title of the law no. 4688 “Public Servants’ Trade Union Law” has been amended as Law on Public Employees Unions and Collective Bargaining and several articles have been amended and collective bargaining has been included to the system with the constitutional amendment in 2010. Law on Public Employees Unions and Collective Bargaining was adopted by Turkish Grand National Assembly in 4 April 2012. Representatives of Unions chosen in the context of the Law on Public Employees Unions and Collective Bargaining have been given several rights and guarantees. These rights and guarantees were mentioned below under the title “Facilities provided for the worker representatives”.

2. Implementation of the Legislation

There are not any measures for ensuring the implementation of the existing legislation.

3. Statistical Information and Data

There is no quantitative information and data about the issue.

B) INFORMATION DEMANDED BY THE ECSR

1. Article no. 22 of the Labour Law and Guarantees Provided to Workplace Trade Union Representatives

1.1. Article no. 22 of the Labour Law no. 4857

In the article no. 18 titled “Justification of termination with a valid reason” of the Labour Law no. 4857, it is foreseen that membership in a trade union, or participation in union activities out of work hours or within work hours with the consent of employer, being the trade union representative of the business do not constitute a valid reason for termination. The Committee’s allegation about the article no. 22 of the Labour Law undermines the union security is considered to be an indirect comment. Because article no. 22 indicate the way that the worker who is not the member to a trade union can protect his/her individual right. Due to the freedom of being a trade union member is free, the allegation about the provision in this article undermines the union security is not an appropriate determination.

1.2. Guarantees ensured to the worker representatives are indicated below:

a) Public Servants and Collective Agreement Law no.4688

In the 2nd paragraph of the article no. 18 which is entitled “Guarantees for members and administrators of trade unions” of the law no. 4688, it is said that public employer cannot relocate workplace trade union representative, provincial and district representative of the trade union and trade union and branch managers unless the fact is clearly and precisely indicated. Guarantee is provided to the individuals aforementioned with this provision.

b) Trade Unions and Collective Labour Agreement Law no. 6356

With the article no. 24 entitled “Protection of Workplace Representatives” of the law no. 6356, “return to work” was introduced. According to this, an employer shall not terminate the employment contract of workplace representative unless there is a just cause for termination and he indicates this clearly and precisely. The workplace representative or the trade union of which he is a member shall have the right to apply to the competent court within one month of the date when the notice of termination is communicated to him. Moreover, if the court decides that the trade union representative is to be reinstated in his employment, the termination shall be annulled and the employer shall pay his full wages and all other benefits between the termination and final decision date. Compliance to the ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking no. 135 is ensured with this new arrangement.

2. Guarantees ensured to the workplace representatives who have seniority less than 6 months or working in the workplaces where less than 30 workers are working.

In the Labour Law no. 4857, workers’ representatives have not been addressed. There are only regulations about workplace trade union representatives.

Union compensation of the workers whose labour contract was repealed due to the trade union membership has been guaranteed independently from the number of workers in the workplace. In other words, even though the worker does not go to court in the context of the provisions of job security, he/she can demand union compensation not less than an annual wage. This is clearly indicated by the provision of the 5th paragraph of the article 25 titled “Guarantee of Freedom of Trade Union” of the Trade Unions and Collective Agreement Law no. 6356 by saying “Non-application to a court pursuant to the aforementioned provisions of the Law no. 4857 shall not be an obstacle for the worker to claim union compensation separately.” of the 5th paragraph of the article 25 of the Trade Unions and Collective Agreement Law no. 6356

3. Facilities provided for the worker representatives

a) Trade Union and Collective Agreement Law no. 6356

In our legislation, although there is no concept of workers’ representative, there are related provisions in the Trade Union and Collective Labour Agreement Law no. 6356. In accordance with the article 27 titled “Appointment of representatives and their functions” of this law, a trade union, whose competence to conclude the

collective labour agreement is certified, shall appoint shop stewards among its members at the workplace in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the workplace does not exceed 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1,000; not more than six, if the number of workers is between 1,001 and 2,000; and, not more than eight, if the number of workers exceeds 2,000. One of the above may be designated as chief representative. The functions of shop stewards appointed by the competent trade union shall continue as long as the competence of the trade union is valid. Moreover, according to the same article, if there is a provision in the trade union statute which provides for selection of shop stewards through election, the selected member shall be appointed as the shop steward. The duties of shop steward and chief representative, on condition that they are limited only to the workplace, shall be: to hear workers' requests and handle their grievances; to maintain cooperation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist in the application of working conditions provided for in labour legislation and collective labour agreements. Shop stewards shall carry out their duties on condition that their own work and the work discipline at the workplace are not hindered. Shop stewards shall be provided with appropriates means to carry out their duties in the workplace quickly and efficiently.

b) Occupational Health and Safety Law no. 6331

The subjects relating the worker representatives in our legislation have been arranged by the article no. 20 of the Occupational Health and Safety Law no. 6331. In the context of this article, the rights of the worker representatives should not be limited because of their respective activities and the employer shall provide them with the necessary means to enable such representatives to exercise their rights and functions. Paragraph (ı) of the article no. 26 of the Law on Occupational Health and Safety Law no. 6331, in case the rights of the worker representatives are not protected, administrative fines are foreseen for the employer who violets the obligations.

c) Public Servants' Trade Unions and Collective Agreement Law no. 4688

Various rights and guarantees were given to the shop stewards chosen in the context of the law no. 4688. These rights and guarantees are indicated below.

- Public servants cannot be subject to a different treatment or cannot be removed from office due to participation to the activities of trade unions or confederations outside the working hours or within the working hours with the permission of the employer.

- Public employer cannot relocate workplace trade union representative, trade unions' workplace representative, provincial and district representative of the trade union and trade union and branch managers unless the fact is clearly and precisely indicated.

- Public employer cannot distinguish between public servants based on their being or not members to trade unions.

- Executive board members have the right to unpaid leave or they are considered in leave for one day in a week.

- Provincial and district representatives of trade union who satisfy the conditions specified in the law are allowed to use four hours leave per week.

- In the scope of the law no. 4688, public servant who are in leave without salary applies in a certain period, public employer is obliged to appoint this person to his previous position or another appropriate position in one month.

ARTICLE 29 – RIGHT OF EMPLOYEES TO BE INFORMED AND CONSULTED IN THEIR DISMISSAL PROCESS

Contracting parties commit to have employers inform and consult employee representatives in time a certain while before collective dismissals on the means and methods to minimizing its impacts by taking part in social measures aimed at re-placement and re-education of related personnel for instance and preventing the emergence of collective dismissals or restricting them in order to ensure that employees effectively exercise their right to be informed and consulted in the process of collective dismissal.

Annex to 29th Article:

As for the application of this article, the term "workers representatives" shall herein be referred to as accepted in national legislature or in practice.

Scope of the provision as interpreted by the ECSR

Workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.

Consultation procedures must take place in good time, before the redundancies. The purpose of the consultation procedure, which must cover at least the "ways and means" of avoiding collective redundancies or limiting their occurrence and support measures.

Consultation rights must be accompanied by guarantees that they can be exercised in practice

A) INFORMATION AND DATA REGARDING THE DEVELOPMENTS IN THE REPORTING PERIOD

1. Legislative amendments and reforms

No particular amendment has been made to our legislation in the reporting period.

2. Implementation of the legislation

No measure has been taken for the implementation of existing legislation in the reporting period.

3. Statistical information and data

According to the 29th Article of Labour Act no 4857 regulating collective dismissal of workers, when an employer is to dismiss workers collectively, he must inform the trade union representative of its reasons along with information on number and groups of workers to which this process will apply and time interval at which the procedure for terminating employment contracts of these workers will take place 30 days in advance in writing.

Under the inspection programs undertaken by Presidency of Labour Inspection Board, it is monitored if regulations regarding collective dismissals envisaged in the Law no 4857 and other related legislation are complied with or not. The workplaces opposing the said Article shall be charged with administrative fine in accordance with 100th Article of the same Law. It has been found out that 29th Article of the Labour Act was breached 113 times in inspections held during the reporting period and a sum of 1.624.233 TL administrative fine in total has been imposed for these breaches.

The following is the statistical data as regards inspections held during the reporting period

Years	Number of Workers Collectively Dismissed	Number of Workers Employed as Replacement to Dismissed Workers
2009	6.341	-
2010	10.472	341
2011	4.753	38
2012	1.125	106
TOTAL	22.691	485

B) EUROPEAN SOCIAL RIGHTS COMMITTE (ESRC) RESULTS

1. The term "Agricultural Workers" and other employees outside the scope of legislation

In workplaces and enterprises employing 50 or less than 50 workers operating in the area of forestry and agriculture, provisions of Labour Act no 4857 do not apply in