

## – Turkey and the European Social Charter –

### Signatures, ratifications and accepted provisions

Turkey ratified the 1961 Charter on 24/11/1989. It has signed, but has not yet ratified, the Additional Protocol of 1988 on 05/05/1998.

Turkey ratified the Revised European Social Charter on 27/06/2007 and has accepted 91 of the revised Charter's 98 paragraphs. It has ratified the Amending Protocol of 1991 on 10/06/2009.

Turkey has not signed nor ratified the Additional Protocol providing for a system of collective complaints.

### The Charter in domestic law

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

### Table of accepted provisions

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

### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Turkey](#) in 2013 and in 2018. The Committee considers that there are no obstacles to the immediate acceptance of Articles 5 and 6.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Turkey

Between 1989 and 2019, Turkey has submitted 15 reports on the application of the 1961 Charter and 10 reports on the application of the Revised Charter.

The [10<sup>th</sup> report](#), submitted on 02/05/2018 covers the accepted provisions of the Revised Social Charter relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29).

Conclusions with respect to these provisions have been published in March 2019.

The 11<sup>th</sup> report, which was to be submitted by 31/10/2018, should concern the accepted provisions relating to thematic group 4 "Children, families, migrants", namely:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

Conclusions with respect to these provisions will be published in January 2020.

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<sup>1</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity <sup>3</sup>

### Thematic Group 1 « Employment, training and equal opportunities » - Conclusions 2016

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

- There is insufficient protection against discrimination in employment, in particular on grounds of sexual orientation;
- The upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- The restrictions on access of nationals of other States Parties to several categories of employment are excessive which constitute a discrimination on grounds of nationality;
- The Martial Law No.1402/1971 does not adequately protect local government officials and employees.

► *Article 154 – Right to work – Vocational guidance, training and rehabilitation*

It has not been established that the right of persons with disabilities to mainstream education and vocational training is effectively guaranteed.

► *Article 1054 – Right to vocational training – Long term unemployed persons*

It has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.

► *Article 1551 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities*

It has not been established that the right of persons with disabilities to mainstream education and vocational training is effectively guaranteed.

► *Article 1552 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities*

- It has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment;
- It has not been established that the legal obligation to provide reasonable accommodation is respected.

► *Article 1553 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community*

It has not been established that anti-discrimination legislation covers the fields of housing, transport, communications and culture and leisure activities.

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

- Regulations governing access to self-employment of foreign workers have not been liberalized;
- Loss of employment leads to the cancellation of the residence permit.

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

- Women are not permitted to work in all professions, which constitutes discrimination based on sex;
- The limits imposed on compensatory awards in cases of discrimination based on sex may prevent such violations from being adequately remedied and effectively prevented.

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

- Holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred are not covered by Turkish legislation;

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<sup>3</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

- The amounts due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system are not covered by Turkish legislation.

## **Thematic Group 2 « Health, social security and social protection » - Conclusions 2017**

### ▶ *Article 353 – Right to safe and healthy working conditions - enforcement of safety and health regulations*

- Measures taken to reduce the number of accidents at work are insufficient;
- The labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

### ▶ *Article 11§1 – Right to protection of health – Removal of the causes of ill-health*

Measures taken to reduce infant and maternal mortality rates have been insufficient.

### ▶ *Article 12§1 – Right to social security– Existence of a social security system*

It has not been established that the existing social security schemes cover a significant percentage of the population.

### ▶ *Article 13§1 – Right to social and medical assistance – adequate assistance for every person in need*

It has not been established that the level of social assistance paid to a single person without resources is adequate.

### ▶ *Article 14§1 – Right to social welfare services – promotion or provision of social welfare services*

It has not been established that the number of social services staff is adequate and has the necessary qualification to match user's needs.

### ▶ *Article 14§2 – Right to social welfare services – public participation in the establishment and maintenance of social services*

It has not been established that the conditions under which non-public providers take part in the provision of welfare services are adequate.

### ▶ *Article 23 – Right of the elderly to social protection*

- During the reference period, there was no anti-discrimination legislation;
- It has not been established that there is an assisted decision-making procedure for elderly persons.

### ▶ *Article 30 – Right to be protected against poverty and social exclusion*

There is no adequate overall and coordinated approach to combating poverty and social exclusion.

## **Thematic Group 3 « Labour rights » - Conclusions 2018**

### ▶ *Article 2§1 – Right to just conditions of work– Reasonable working time*

The maximum weekly working time may exceed 60 hours in flexible working time arrangements.

### ▶ *Article 4§2 – Right to a fair remuneration – Increased remuneration for overtime work*

Civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.

### ▶ *Article 4§4 – Right to a fair remuneration – reasonable notice of termination of employment*

- No notice period is required for dismissal during a probationary period;
- A two weeks' notice period, is not reasonable for employees employed in agriculture and forestry in enterprises with less than 50 employees with more than six months and less than a year of service;
- A six weeks' notice period is not reasonable for employees employed in agriculture and forestry in enterprises with less than 50 employees, with more than five years of service.

### ▶ *Article 4§5 – Right to a fair remuneration – Limits to deduction from wages*

After maintenance payments and all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

► *Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

- The protection granted to workers' representatives is not extended for a reasonable period after the expiration of their mandate;
- It has not been established that facilities granted to workers' representatives are adequate.

**Thematic Group 4 « Children, families, migrants » - Conclusions 2015**

► *Article 7§1 – Right of children and young persons to protection – prohibition of employment under the age of 15*

The prohibition of employment under the age of 15 is not effectively guaranteed.

► *Article 7§3 – Right of children and young persons to protection – prohibition of employment of young persons subject to compulsory education*

The duration of light work permitted to children subject to compulsory education during school holidays is excessive.

► *Article 7§4 – Right of children and young persons to protection – length of working time for young persons under 16*

The daily and weekly working time for young workers under the age of 16 years is excessive.

► *Article 7§8 – Right of children and young persons to protection – Prohibition of night work*

Night work for workers under 18 years of age is prohibited only in industrial undertakings.

► *Article 7§10 – Right of children and young persons to protection – Special protection against physical and moral dangers*

It has not been established that child victims of sexual exploitation cannot be prosecuted (Conclusions 2017 and 2015).

► *Article 8§1 – Right of employed women to protection of maternity – Maternity leave*

The level of maternity benefits provided to women employed in the press sector is not adequate.

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

- There is no adequate protection in the Labour Act against unlawful dismissals during pregnancy or maternity leave;
- Not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave;

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

Pregnant women, women who have recently given birth or who are nursing their infant are only entitled to unpaid leave when such leave is granted because no other protective measures can be taken to protect them from exposure to risks inherent to their post.

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

There is no general system of family benefits.

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

- Not all forms of corporal punishment are prohibited in the home, in schools and in institutions;
- It has not been established that minors are always separated from adults in prisons (Conclusions 2017 and 2015).

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

Irregularly present children do not have effective access to education.

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

It has not been established that migrant workers are provided with free assistance services and information (Conclusions 2017).

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

During the reference period, migrant workers were not entitled equal access in employment.

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

The requirement that family members of a migrant worker reside for Turkey for three years before acquiring an independent right of residence is excessive.

► *Article 19§7 – Right of migrant workers and their families to protection and assistance – Equality regarding legal proceedings*

As regards the civil procedure, equal treatment is not guaranteed for the nationals of every State party, in respect of the right to legal aid (Conclusions 2017).

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

- It has not been established that lawfully resident migrant workers are entitled to adequate guarantees in case of expulsion (Conclusions 2017 and 2015);
- "Foreign gypsies and nomads" can be deported by decision of the Ministry of Internal Affairs on ground that they are not connected to Turkish culture (Conclusions 2017).

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

The grounds of non-conformity with Articles 19§1, 19§6, 19§7, 19§8, 19§11 and 19§12 apply also to self-employed migrants.

► *Article 19§11 – Right of migrant workers and their families to protection and assistance – Teaching language of host state*

It has not been established that sufficient steps are taken to promote the teaching of Turkish language to migrant workers and their families, other than those falling under international protection (Conclusions 2017 and 2015).

► *Article 19§12 – Right of migrant workers and their families to protection and assistance – Teaching mother tongue of migrant*

It has not been established that Turkey effectively promotes and facilitates teaching of the migrants' mother tongue to their children, other than those under international protection (Conclusions 2017).

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

- Fathers, other than civil servants do not have the right to parental leave;
- No compensation or remuneration is paid for parental leave.

► *Article 27§3 – Right of workers with family responsibilities to equal opportunity and treatment – Illegality of dismissal on the ground of family responsibilities*

- Workers in companies with less than 30 employees are not protected against dismissal due to family responsibilities.

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

- It has not been established that adequate housing is defined in law (Conclusions 2017 and 2015);
- It has not been established that there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard (Conclusions 2017 and 2015);

- It has not been established that the legal protection of the right to adequate housing is guaranteed (Conclusions 2017 and 2015).

▶ *Article 31§2 – Right to housing – Reduction of homelessness*

- There are no effective measures to reduce and prevent homelessness (Conclusions 2015)
- It has not been established that adequate eviction procedures exist (Conclusions 2017 and 2015)
- It has not been established that the right to shelter is guaranteed (Conclusions 2017 and 2015).

▶ *Article 31§3 – Right to housing – Affordable housing*

It has not been established that there are remedies with respect to excessive waiting periods for the allocation of social housing (Conclusions 2017 and 2015).

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

**Thematic Group 1 « Employment, training and equal opportunities »**

- ▶ Article 10§3 - Conclusions 2016
- ▶ Article 10§5 - Conclusions 2016
- ▶ Article 24 - Conclusions 2016

**Thematic Group 2 « Health, social security and social protection »**

- ▶ Article 3§1 - Conclusions 2017
- ▶ Article 3§2 - Conclusions 2017
- ▶ Article 3§4 - Conclusions 2017
- ▶ Article 11§3 - Conclusions 2017
- ▶ Article 12§4 - Conclusions 2017
- ▶ Article 13§4 - Conclusions 2017

**Thematic Group 3 « Labour rights »**

- ▶ Article 4§3 - Conclusions 2018
- ▶ Article 22 - Conclusions 2018
- ▶ Article 26§1 - Conclusions 2018
- ▶ Article 26§2 - Conclusions 2018

**Thematic Group 4 « Children, families, migrants »**

- ▶ Article 7§2 - Conclusions 2015
- ▶ Article 7§5 - Conclusions 2017
- ▶ Article 8§2 - Conclusions 2017
- ▶ Article 16 - Conclusions 2017
- ▶ Article 19§2 - Conclusions 2015
- ▶ Article 27§1 - Conclusions 2017
- ▶ Article 27§3 - Conclusions 2017



## **II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

### **Thematic Group 1 « Employment, training and equal opportunities »**

- ▶ Act No. 4817 regarding work permits for foreigners in Turkey which entered into force on 6 September 2003 provides that a foreign worker having a work permit may change his workplace and professional activity subject to the authorisation by the Ministry of Labour and Social Security.
- ▶ Since the repeal of Article 3/II A of the Act No. 506 on Social Insurance, non-nationals who have a working permit in Turkey are automatically insured for long-term risks, including unemployment. Application is no longer conditioned by the existence of bilateral or multilateral agreements.
- ▶ On 3 January 2005 the fee that employers had to pay for notification of vacancies to the employment services was scrapped.
- ▶ The Circular no. 2010/14 of the Prime Ministry (the Official Gazette no. 27591, 25 May 2010) was put into force with a view to strengthening the socio-economic status of women, ensuring equality of women and men in social life and enhancing employability of women.
- ▶ General legislation (Labour Act No. 4857) against discrimination in employment (extension of the concept, possibility of reinstatement and of compensation proportional to the damage suffered etc.).
- ▶ On the basis of Decree No. 573/97 persons with disabilities are permitted access to special and higher education.
- ▶ The first Disability Law (No. 5378) passed in 2005 was revised on 6 February 2014 in order to bring it in line with the obligations under the UN Convention on the Rights of Persons with Disabilities. It covers equal rights for persons with disabilities in the areas of education and vocational training, while specifically prohibiting discrimination on the ground of disability.

### **Thematic Group 2 « Health, social security and social protection »**

- ▶ A number of measures to reduce infant and maternal mortality, including access to family doctors, the increase in the number of "Baby Friendly Hospitals" or the "Guest Mother Project", have led to very significant improvements in respect of infant and maternal mortality rates.
- ▶ Amendments to Law No. 4207 on Preventing the Damage of Tobacco Products and their Control, new regulations have started to be implemented as of May 2008 on passive smoking. It is now prohibited to smoke in all open and closed public spaces.
- ▶ Introduction of a system of unemployment benefits (Act reforming certain aspects of the social security system, entered into force on 8 September 1999).
- ▶ New legislation in Turkey to strengthen the link between social assistance and the labour market (Law No 6704) was adopted on 14 April 2016.
- ▶ The number of people insured for old age has increased by 19% (from 17 076 451 to 20 380 319) from 2011 to 2015, while the total population growth in the same period was below 6% (from 74 525 696 to 78 741 053);
- ▶ In 2013, the personal coverage of healthcare insurance has been extended to children below 18 years old who were not already covered on account of their family or curators, to persons under a protective injunction (victims of domestic violence), to persons training to work in penal institutions and jails and their families, to

persons who graduated from high-schools or higher education in the last two years (subject to age conditions) and were not already covered as dependants;

► In 2014 (Law No. 6552) the time limit for survivors to claim their pension has been extended from 6 to 12 months;

► In 2014 and 2015, certain measures have been taken in favour of workers performing underground works in the mines, in particular their earliest pensionable age has been set for 50 years (instead of 55) for those who worked underground for at least 20 years (Law No. 6552) and favourable provisions have been taken in favour of survivors of miners deceased because of work accidents in coal and lignite mines in the last ten years (Law No. 6645).

► Decree Law on the Organization and Functions of the Ministry of Family and Social Policy has set up a general social services system. It constitutes a total shift from previous legislation in the sense that the new regime is more citizen-oriented.

► New legislation in Turkey to strengthen the link between social assistance and the labour market (Law No 6704) was adopted on 14 April 2016.

► The monthly poverty benefit (*muhtaçlık aylığı*) has been available regardless of nationality since 17 January 1997.

### **Thematic Group 3 « Labour rights »**

► Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "*Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment*". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment.

► In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the "Guideline on Psychological Harassment in Workplaces", which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment.

### **Thematic Group 4 « Children, families, migrants »**

► Legislation aiming at increasing the availability of childcare (Law No. 5212).

► Legislation against domestic violence (Law No. 4320/1998).

► Under Section 82 of the Regulation on Seafarers of 31 July 2002, young workers under 18 years of age must now undergo regular medical examinations every 12 months.

► In 1997, compulsory education was extended to eight years.

► The Labour Code, which entered into force in 2003, states that employment of children over the age of 14 in light work is permitted on the condition that they have completed compulsory education.

► Section 3-II/A of Social Insurance Act No. 506 of 1964 which excluded the affiliation of foreigners in respect of long-term risks has been repealed.

► The amendments introduced by Regulation No. 28566/21.02.2013 to the Regulation No. 25425 on the "Employment Procedures and Principles on Children and Young Workers", workers who have not turned 18 can not be employed in work which involve dangerous and unhealthy tasks such as: production and wholesale of alcohol, cigarettes and addictive substances; the production and wholesale of combustible, explosive, harmful

and dangerous substances and their processing, storing and all sorts of work which involves exposure to such substances; work in excessive hot and cold environment.

► Under Section 8 of the Regulation on employment of female employees at night-work of 24 July 2013 (Official Gazette No. 28717), female employees cannot perform night work during their pregnancy, upon presentation of a medical certificate.

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