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EUROPEAN SOCIAL CHARTER

Comments by the Human Rights Association (İnsan Hakları Derneği -İHD)
on the 14th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF THE REPUBLIC TÜRKİYE

Articles 2, 4, 21, 22, 26, 28 and 29
for the period 01/01/2017 – 31/12/2020

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HUMAN RIGHTS ASSOCIATION REPORT ON THE 14th NATIONAL REPORT ON THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER (REVISED) SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF TURKEY

29 June 2022

About İHD

Human Rights Association (İnsan Hakları Derneği - İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 27 branches and 7 representative offices. İHD is the oldest and largest human rights organization in Turkey and its sole and specific goal is to promote “human rights and freedoms.”

İHD is a member of the International Federation of Human Rights (FIDH) based in Paris and of EuroMed Rights based in Copenhagen. İHD founded and is a member of the Human Rights Joint Platform (HRJP) in Turkey, while it founded the Turkish Coalition for the International Criminal Court and still serves as its speaker. İHD also founded the Human Rights Foundation of Turkey (HRFT) with a group of physicians in 1990.

İHD issues special reports on various human rights issues including annual reports on human rights violations in Turkey. These include but are not limited to violations of the rights of women, freedom of speech, the legal system, prisons, impunity, enforced disappearances, murders by unknown assailants, extrajudicial executions, torture and ill-treatment, and notably gross human rights violations in places where curfews were declared.

İHD is an organization that submits shadow reports before committees at the United Nations and the Council of Europe that Turkey is a party to. İHD works in cooperation with the UN High Commissioner for Human Rights and the CoE Commissioner for Human Rights and special rapporteurs. Furthermore, İHD is an organization that is engaged in exchange of views with diplomatic missions of countries emphasizing the protection of human rights in their foreign policies. İHD cooperates with bodies and institutions working for democracy in Turkey as well.

Introduction

The İHD report incorporating the association's assessment of the government's 4-year report covering the period between 01.01.2017 and 31.12.2020 on Articles 2, 4, 21, 22, 26, 28 and 29 of the Social Charter on labor rights, defined as Group 3 in the European Revised Social Charter, is hereby briefly presented.

For a better understanding of the issue, it is useful to look at the current state of democracy and human rights in Turkey and some basic employment and wage statistics in the country.

Since 2015, Turkey has evolved into an increasingly authoritarian form of government in an environment of protracted armed conflict due to the failure to achieve a conflict resolution in the Kurdish issue.

The state of emergency (SoE), which started on 20 July 2016 and ended on 19 July 2018, was made permanent with the Law No. 7145, citing the armed clashes that started on July 24, 2015 and the coup attempt that followed on July 15, 2016. Today, Turkey is experiencing an authoritarian period characterized by the SoE regime. With the constitutional amendment adopted on April 16, 2017, the regime was changed, and this regime was named "Turkish-Type Presidential Model" or the "Presidential Cabinet." Prior to the referendum on the constitutional amendments, the Venice Commission visited Turkey and in March 2017 released its "Opinion on the Amendments to the Constitution,"¹ warning that these amendments would seriously undermine the separation of powers. This regime is characterized by authoritarian rule. Prof. Dr. Nilgün Toker describes this new authoritarian regime as the "Regime of Uncertainty."

The Parliamentary Assembly of the CoE has also taken action in response to the restrictions of rights and freedoms under the state of emergency regime, which exceed the limitations criteria. April 25 April 2017, the Parliamentary Assembly of the Council of Europe resumed its political monitoring of Turkey. Since the government did not comply with the ECtHR's Kavala verdict, the CoE Committee of Ministers decided to apply to the ECtHR against Turkey for a judgment of violation with its decision dated 2 February 2022².

Following the 15 July 2016 coup attempt against the government, the government issued Emergency Decree Laws [Kanun Hükmünde Kararname -KHK] restricting fundamental rights and freedoms in the period following the declaration of the SoE. These decree laws were excluded from judicial review. In the application concerning the decree laws, the Constitutional Court reversed its "previous" jurisprudence with its 2016 judgment on the SoE decree laws and found that these decree laws were not subject to constitutionality review. In the following dates, even though the SoE was lifted, these decrees were passed into laws through Laws No. 7145 and No. 7333 to be applied under ordinary states/conditions.³

Under the authoritarian regime in Turkey, the COVID-19 pandemic and the subsequent economic crisis caused serious losses in workers' rights, unemployment increased, workers were impoverished and left under inflationary pressure.

¹ Venice Commission. "Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017." 13 March 2017. <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e)>

² İHD-Öztürk Türkdoğan. "Human Rights Defenders in an Iron Cage." 13 May 2022. <https://ihd.org.tr/en/wp-content/uploads/2022/05/OzturkTurkdogan_ATL-Report_OMCT_EN.pdf>

³ İHD-Hüsnü Öndül. "Emergency Decree Laws and Their Impact on Human Rights in Turkey." 13 May 2022. <<https://ihd.org.tr/en/wp-content/uploads/2022/05/EmergencyDecreeLawsReport.pdf>>

According to April 2022 data from the Turkish Statistical Institute (TurkStat), Turkey's official statistics agency, the unemployment rate in Turkey is 11.3%. The broadly defined unemployment rate is 21.7%.⁴ According to the same data, the de facto weekly working time in Turkey is 45.1 hours.

According to data provided by the TurkStat on 16 August 2021, the rate of informal workers, which shows the share of those who work without being affiliated to a social security institution in total employees, decreased by 1.5 points in the second quarter of 2021 compared to the same quarter of the previous year and became 28.7%.⁵

The report "Four-Year Balance Sheet of the Presidential Regime: The Country and the Workers Lost!" published by the Research Center of the Confederation of Progressive Trade Unions (DİSK-AR) on 24 June 2022, compared 2018 with 2022. Accordingly, the inflation rate announced by TurkStat increased from 15.4% to 73.2%, the minimum wage increased from 1,603 TL (336 USD) to 4,253 TL (245 USD), the hunger limit increased from 1686 TL to 5,833 TL, the poverty line increased from 5,557 TL to 19,220 TL.⁶ In Turkey, where the minimum wage is currently 4,253 TL, a family of four needs 19,220 TL per month to survive. Average wages in Turkey are well below the poverty line.

Finally, we would like to point out that TurkStat constantly changes scales and underestimates the Consumer Price Index (CPI) from the inflation figures, causing the wages of workers to erode in real terms. The same TurkStat manipulates the Producer Price Index (PPI), which is important for employers, to a lesser extent. For instance, while the CPI, which was last announced on 3 June 2022, was 73.5%⁷ as of May 2022, the same TurkStat announced the annual PPI to be 132.16% as of May 2022.⁸

A study by the Inflation Research Group, formed by independent academics in Turkey, measured the annual CPI as 160.76% as of May 2022.⁹ The difference reveals that workers and pensioners in Turkey have seen their wage increases cut by more than half and have become poorer.

According to the DISK Research Center, the number of registered workers in Turkey in January 2022 was 15 million 294 thousand. Only 2 million 189 thousand of these are unionized workers. The unionization rate in the working class in Turkey is 14.3%. Among

⁴ TurkStat. "Labor Force Statistics: April 2022." 10 June 2022.

<<https://data.TurkStat.gov.tr/Bulten/Index?p=%C4%B0%C5%9Fg%C3%BCc%C3%BC-%C4%B0statistikleri-Nisan-2022-45649&dil=1>>

⁵ TurkStat. "Labor Force Statistics: 2nd Quarter: April-June 2021." 16 August 2021.

<<https://data.TurkStat.gov.tr/Bulten/Index?p=Labour-Force-Statistics-Quarter-II:-April-June,-2021-37546#:~:text=Sosyal%20g%C3%BCvenlik%20kurulu%C5%9Funa%20ba%C4%9Fl%C4%B1%20olmadan,%28%2C7%20olarak%20ger%C3%A7ekle%C5%9Fti.>>>

⁶ DİSK-AR. "Başkanlık Rejiminin Dört Yıllık Bilançosu: Ülke ve Çalışanlar Kaybetti!" 24 June 2022.

<<http://arastirma.disk.org.tr/wp-content/uploads/2022/06/DISK-AR-Baskanligin-4-Yili-Rapor-Haziran-2022.pdf>>

⁷ TurkStat. "Consumer Price Index, May 2022." 3 June 2022. <<https://data.tuik.gov.tr/Bulten/Index?p=Tuketici-Fiyat-Endeksi-Mayis-2022-45794>>

⁸ TurkStat. "Domestic Producer Price Index, April 2022." 5 May 2022.

<<https://data.tuik.gov.tr/Bulten/Index?p=Yurt-Ici-Uretici-Fiyat-Endeksi-Nisan-2022-45853>>

⁹ ENAGrup. "ENAGrup CPI." May 2022. <<https://enagrup.org/>>

unionized workers, 72% benefit from collective bargaining agreements, while 28% of these workers do not.¹⁰

According to the July 2021 statistics of the Ministry of Labor, 1,718,984 out of 2,658,555 public sector workers who can join unions are unionized, with a unionization rate of 64.66%.¹¹

As the rate of collective bargaining is low in Turkey, wages are generally minimum wage or just above minimum wage. Therefore, there is also a problem with wages. Unionization rate in the public sector is high. However, since public employees do not have the right to strike according to Law No. 4688 and collective bargaining disputes have to be settled by an arbitration board, wages are generally determined according to the government's budget and the official inflation rate. The average wage of public employees, on the other hand, is higher than that of workers. Since the year 2022 was marked by high inflation in Turkey, we have not yet come across any research on this issue. Nonetheless, the results of a study by DİSK-AR dated 28 December 2021 confirms our findings.¹²

Article 2: Right to Just Conditions of Work

1- Situation Regarding Weekly Working Hours

In Turkey, Article 63 of the Labor Law No. 4857 stipulates that the weekly working time is 45 hours and working hours are regulated according to different situations. In Turkey, weekends for workers are on Sunday and for public officials on Saturday and Sunday.

Article 41 of the Labor Law stipulates that a maximum of 270 hours of overtime work can be performed annually.

The working time of employees working in the public sector is regulated as 40 hours per week in Article 99 of the Civil Servants Law No. 657.

Article 178 of the Law No. 657 stipulates that public officials can be work more. In this way, it is stated that a maximum of 10 days of leave will be granted per year as 1 day for every 8 hours of overtime work. The remaining overtime work is subject to a very low hourly wage. Further, overtime working hours and wages are regulated in Schedule K of the annual budget law issued every year, and overtime working hours for many public institutions vary between 60 hours and 90 hours per month. In this case, there are considerable periods of overtime work in the public sector.

In the public sector, in places where health services and inpatient social services are provided, instead of employing enough personnel on the grounds that 24-hour service is provided, overtime work is made to be performed by making them work 24 hours a day or 16-hour shifts. According to Additional Article 33 of Law No. 657, they are made to work on call for up to 120 hours per month and are paid low wages below the hourly wage. In

¹⁰ DİSK-AR. "15 milyon işçinin toplu iş sözleşmesi yok!" 21 April 2022. <<http://disk.org.tr/2022/04/disk-ar-15-milyon-iscisinin-toplu-is-sozlesmesi-yok/>>

¹¹ Ministry of Labor. "2021 Union Statistics." 2 July 2021. <https://www.csgeb.gov.tr/media/81565/2021_uyesayilari.pdf>

¹² DİSK-AR. "Ücretler enflasyonun altında! Ortalama ücret ve asgari ücret makası kapanıyor." 28 December 2021. <<http://arastirma.disk.org.tr/?p=8092#:~:text=T%C3%9C%C4%B0K%2C%202020%20y%C4%B1%C4%B1na%20ait%20%C4%B0%C5%9Fg%C3%BCc%C3%BC,%C3%BCcret%20ise%20y%C3%BCzde%20197%20artt%C4%B1.>>>

addition, employees are made to work on call from home up to 130 hours a month, which is called the “necessity shift” (icap nöbeti), physicians are paid, and other health workers are given leave corresponding to the time they work instead of being paid.

Resident physicians working in university hospitals and Ministry of Health Training and Research Hospitals are overworked, and there are residents who continue to work after a 24-hour shift. Rümeyza Berin Şen, resident working in Ankara City Hospital, died in a traffic accident after her shift due to extreme fatigue.¹³

Security sector workers are often overworked as well. Police officers of the General Directorate of Security work an average of 240-260 hours per month.¹⁴ Their working hours are regulated by circulars or orders, not by law.

In Turkey, the mismatch in working hours between the public and private sectors should be addressed on the basis of reduced working hours. The main problem in the country is long working hours under the name of overtime work or shifts. It is not compatible with the Social Charter.

Audit Activities Related to Working Hours

Considering the organizational structure of the General Directorate of Labor in Turkey and the number of inspectors it employs, we can state that inspections of private sector workplaces are not effective. There are two reasons: 1- The administrative fines imposed are not deterrent enough and the amount of fines is low. 2- Perhaps most importantly, special laws, known as premium and penalty amnesties, are enacted almost every 2 years. Most recently, with the Law No. 7326 published in the *Official Gazette* of 9 June 2021, the interests of SSI premiums, tax receivables and administrative fines were forgiven and the actual receivables were paid in installments.¹⁵ In order to combat overwork, the amount of administrative fines should be increased and they should be excluded from the scope of amnesty. In the public sector, legal amendments should be made in favor of employees.

Measures Taken during the COVID-19 Pandemic

The COVID-19 pandemic in Turkey was stated to have started on 11 March 2020. The government managed the pandemic measures with various laws and mainly administrative circulars and decisions rendered by provincial health boards and governors’ offices.

In this regard, we will briefly mention the report on economic and social rights during the COVID-19 period released by İHD on 18 December 2020¹⁶ and the research report on the

¹³ Turkish Medical Association. “Dr. Rümeyza Berin Şen’i Ölümünün Dördüncü Ayında Anıyoruz!” 23 February 2022. <<https://ato.org.tr/news/show/1088>>

¹⁴ *Cumhuriyet*. “Polisler anlatıyor.” 10 April 2022. <<https://www.cumhuriyet.com.tr/siyaset/polisler-anlatiyor-uzun-calisma-saatleri-amir-tahakkumu-sendikasilik-ve-surulme-korkusu-ile-yasiyoruz-1924414>>

¹⁵ *Official Gazette*. 9 June 2021. <<https://www.resmigazete.gov.tr/eskiler/2021/06/20210609-1.htm>>

¹⁶ İHD. “Report on Economic and Social Rights during the COVID-19 Pandemic.” 18 December 2020. https://ihd.org.tr/en/wp-content/uploads/2020/12/SR202012_Economic-and-Social-Rights-Report-2.pdf

Also see: Ali Ergur and Besim Can Zırh. “Küresel Salgında Sosyolojik Araştırma.” *Journal of Sociological Research*. 25:1 (2022). <<https://dergipark.org.tr/en/download/article-file/2321064>>

effects of the pandemic on workers in the second year of the pandemic released by DİSK 11 March 2022.¹⁷

According to the DİSK study:

During the pandemic, the gap between the average wage and the minimum wage has closed even more, the two most important problems during the pandemic were unemployment and low wages, household expenses have increased, life and livelihood have become more difficult and borrowing has increased, spending has been cut and the tendency towards cheap food has increased, the main source of assistance was families while the Turkish Employment Agency (İŞKUR) was in second place, COVID-19 was a worker's disease and 46% of workers themselves or their colleagues have contracted COVID-19. It was concluded that despite the pandemic, production sites continued to operate and workers worked uninterruptedly, three quarters of workers changed their working style, the violation of the right to disconnect increased among those working from home, the burden of housework and care increased during the pandemic, the domestic workload of women workers also increased and women's labor was invisible, the support provided by the government and employers was found to be insufficient by workers, and the rate of those who found the government's health policy successful was low.

According to the İHD report:

The Human Rights Association that has long been working to promote human rights and freedoms has received an unprecedented number of applications on violations of economic and social rights during the pandemic.

Although the Turkish Statistical Institute (TurkStat) indicated a decline in the unemployment rate during the pandemic, the state of affairs in the labor market is the exact opposite. Unemployment skyrocketed particularly in April, May and June 2020.

While the "economic stability shield package" implemented within the scope of the government's response to the pandemic was mainly composed of loans offered and debts deferred, the amount of direct income support provided to citizens who lost their jobs and income remained quite low. The limited resource allocated for financial aid to citizens further deteriorated the economic and social destruction created by the pandemic particularly for the most vulnerable groups.

The primary source for financial aid offered to citizens because of the pandemic has been the unemployment insurance fund.

Even 36% of registered workers were not able to benefit from the short-time working pay due to strict eligibility conditions.

Since the substitution rates of the unemployment benefit, short-time working pay, and financial aid for wages were low, losses incurred in the wages of workers could not be compensated.

Even access to food and basic consumption goods became quite hard during the pandemic for poor households. Specifically households, which have had hard time in meeting their fixed costs, are being overwhelmed by gradually increasing debts due to fixed costs like electricity, water bills and rent payments.

Women and the disabled top the list of groups most vulnerable to the pandemic. Women poverty increased with the pandemic during which women's caregiving burdens within the household got heavier.

¹⁷ DİSK-Ar. "İkinci Yılında Salgının İşçilere Etkileri." 11 March 2022. <<http://disk.org.tr/2022/03/ikinci-yilinda-salginin-iscilere-etkileri-arastirma-raporu-aciklandi/>>

Another group unable to benefit from state financial aids was small business owners and independent workers despite the fact that they were extremely affected by the pandemic.

Since the premiums for long-term insurance branches were not paid for workers benefitting from short-time working pay and financial aid, the periods during which they received these pays will not be taken into account in the total premium day count and particularly in pension rights. This makes it harder especially for those who work in precarious and casual jobs to enjoy social security rights like pension and disability retirement.

The state, which is responsible to provide a minimum standard of living for its citizens as per the social state principle, failed in its responsibility to do so. Instead this gap was attempted to be filled in by HDP through campaigns like “sister families” or by CHP’s metropolitan municipalities’ campaigns like “bill on the hook” and the like.

Not only could employees be protected against unemployment and income losses but also they were not protected against the virus at their work places. **At least 368 employees lost their lives due to COVID-19 within the last 7.5 months.** The Social Security Institution (SSI) circumvented COVID-19 to be reported as work accident or professional disease while at the same time blocking such professional murders to be recorded.

As a result, the measures taken are not deemed sufficient.

Remote Working

The regulation on remote working was implemented during the pandemic. However, production continued in production-based workplaces.

Flexible Working Methods in the Public Sector

Flexible working in the public sector is regulated by presidential circulars. However, health workers were excluded from these circulars which led to serious problems in the health sector. The lawsuits filed with the Council of State by the Health and Social Service Workers' Union (SES) and the Turkish Medical Association against the circulars of the Presidency and the Ministry of Health excluding health workers were not granted stay of execution decisions and these lawsuits remained ineffective. The first regulation on this issue was the Ministry of Health's circular dated 30 March 2020, which banned the resignation and retirement from office of health personnel working in the public and private sectors.¹⁸ These measures were later extended and continued to be implemented.

Restriction of Termination of Employment Contracts during the Pandemic

Law No. 7244, published in the *Official Gazette* of 17 April 2020, added a provisional Article 10 to the Labor Law, which to a great extent restricted the termination of employment contracts. The government was late in taking this measure because the pandemic was declared in Turkey on 11 March 2020. Many businesses terminated employment contracts of many workers until April 17. In return for restricting the termination of employment contracts, unpaid leave was allowed. Those on unpaid leave were provided with cash wage support by the government for a certain period of time. The amount of cash wage support remained very low.

Health sector workers

Health sector workers have worked extraordinarily hard and made great sacrifices during the pandemic. We thank them. During the pandemic, they were prohibited from resigning and leaving their posts, and were not even allowed to retire. Generally, they could not use their annual leave and their leave was carried over to the following year.

As defined in Article 178 of Law No. 657, overtime pay is determined by the budget law every year. For the year 2022, the overtime fee is 2.7 liras. Overtime pay does not correspond to an hourly wage as in the case of workers. Article 178 of Law No. 657 must be amended in order to harmonize overtime pay with the contract for public sector employees. When health personnel are on call, they are paid per hour in the amount defined in the additional Article 33 of Law No. 657. This fee does not correspond to the hourly wage. Therefore, the amount of wage here should also be increased.

During the pandemic, many health workers stayed at the hospital where they worked for periods of 15 days each in order not to infect their families. Therefore, they served for quite long periods of time. In return, they were partially compensated for excessive overwork by

¹⁸ SES. "Gerekli Önlemleri Alarak Çalışmayı Teşvik Edin!" 1 April 2020. <<https://ses.org.tr/2020/04/gerekli-onlemleri-alarak-calismayi-tesvik-edin/>>

being given extra allowances. However, it was not enough. Due to the pandemic, 506 health workers actively working between 17.03.2020 and 28.02.2022 lost their lives.¹⁹ Despite this fact, COVID-19 was not defined as a work accident and occupational disease for healthcare workers. Protests, calls and scientific explanations about the matter have been ignored.²⁰ In this regard, a lawsuit was filed with the Council of State against the SSI's circular dated 07.05.2020 and numbered 2020/12, but the requests were rejected. The judiciary remained passive on this issue as well.

Informing Civil Servants about the Employment Relationship

In the case of workers, the probationary period after the recruitment of the employee is 2 to 4 months according to the Labor Law, while this period is 1 to 2 months for public officials according to Article 54 of Law No. 657. In this respect, the 1-2 year period regulated in Articles 54-57 of Law No. 657 is not in line with the Social Charter. This period should be reduced as much as possible.

Whether Workers' Representatives are Consulted on Occupational Health and Safety Issues

Law No. 6331 on Occupational Health and Safety entered into force on 30.06.2012. Articles 6 and 7 of this law regulate occupational health and safety services and the support of these services, and its implementation for public institutions and for less dangerous workplaces with less than 50 employees has been continuously postponed. It is stated that it will enter into force on 31.12.2023²¹ for the time being. In private sector workplaces, effective inspections should be maintained to ensure the implementation of Law No. 6331.

On the rights and duration of additional paid leave for employees working in risky jobs

Turkey has legislation on this issue.

Article 40 of Law No. 5510 provides for an actual service increase for those who work in jobs and workplaces that can be defined as strenuous and hazardous/very hazardous jobs, and gives them the right to retire early by adding 60-120 days to their annual work and limiting them to 5 years. However, this practice is also discriminatory. Especially among public servants, military/police and intelligence officers are granted the full annual period, while health workers are only granted the period they actually work. For example, according to Article 40 of Law No. 5510, soldiers and police officers receive 90 days of depreciation time without annual deduction, while health personnel benefit from approximately 40 days of the 60 days worked. Even those working in radiology services benefit from approximately 60 days of the 90 days they work.

¹⁹ Turkish Medical Association. "Pandemi Sürecinde Türkiye'de Sağlık Çalışanı Ölümünün Anlattığı." 29 April 2022. <https://www.ttb.org.tr/kutuphane/sc_olumleri.pdf>

²⁰ BBC News. "Koronavirüs: Meslek örgütlerinden 'COVID-19 meslek hastalığı ve iş kazası sayılınsın' çağrısı." 27 May 2020. <<https://www.bbc.com/turkce/haberler-turkiye-52817389>>

²¹ Law No. 6331 on Occupational Health and Safety. 30 June 2012.

<<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6331&MevzuatTur=1&MevzuatTertip=5>>

According to Article 103 of Law No. 657, radiology workers are entitled to 30 days of additional paid leave per year, which was reduced in proportion to the time worked with the regulation issued in April 2022. This is indeed a setback in current rights.

Article 4: Right to a Fair Remuneration

1- Without prejudice to exceptions in special cases, the situation regarding the right of employees to receive increased wages for overtime work

Article 178 of Law No. 657 stipulates that leave shall be granted for every 8 hours of overtime work, and that a maximum of 10 days of this leave shall be combined with annual leave, and that overtime pay shall be paid if leave cannot be granted. In Turkey, in accordance with the Schedule K annexed to the annual budget law, overtime pay is redetermined each year. For the year 2022, the payment per hour for overtime work specified in Article 178 of Law No. 657 is 2.70 TL. The USD equivalent of this amount is 0.16 cents. In this schedule, monthly overtime working hours for various public institutions are regulated and it is indicated that 60 hours to 90 hours of overtime work can be done per month. This wage is not in line with the Charter. On the contrary, it is well below the hourly wage of the public employees and has now become a wage of almost no material value. This needs to be changed.

Law No. 4857 stipulates 50% more than the hourly wage for overtime work. However, there are problems in practice here too. One of the most frequently requested issues in the lawsuits filed in labor disputes is related to overtime pay. Therefore, more supervision is required.

During the pandemic, additional payments for health workers were increased by 20%, but only those working in pandemic services benefited from this increase, while those working in other services did not benefit from this additional fee despite working more (most of the staff were assigned to work in the pandemic services, while the number of those working in others were reduced). Healthcare workers were provided free public transportation to and from work during the pandemic by local governments, but this does not mean completely free transportation.

The issue of wages of healthcare staff in Turkey is quite complicated. Many healthcare staff receive additional allowances in addition to their monthly salaries. However, since these additional allowances are not reflected in pension deductions, their pensions remain low. For this reason, the government has only introduced additional pensions for medical doctors. No additional pension payments have been made for other healthcare staff other than medical doctors. Law No. 7411, which increased additional payments for health workers, entered into force on June 23, 2022. In this law, the pensions of healthcare staff other than doctors were left the same. The Health and Social Services Workers' Trade Union (SES) criticized such state of affairs with a statement.²²

²² SES. "Sağlıkla ilgili bazı kanunlarda ve 375 sayılı kanun hükmünde kararnamede değişiklik yapılmasına dair kanun teklifinin kabulüne dair bilgi notu." 17 June 2022. <<https://ses.org.tr/2022/06/saglikla-ilgili-bazi-kanunlarda-ve-375-sayili-kanun-hukmunde-kararnamede-degisiklik-yapilmasina-dair-kanun-teklifinin-kabulune-dair-bilgi-notu/>>

Whether male and female workers have the right to equal pay for equal work

Regarding the government's statement that applications can be made to the Human Rights and Equality Institution of Turkey (Türkiye İnsan Hakları ve Eşitlik Kurumu -TİHEK) regarding discriminatory practices, it can be stated that the TİHEK does not have a structure established in accordance with the UN Paris Principles. Human rights organizations that were members of the Human Rights Joint Platform (HRJP), which participated in the deliberations on the draft law on TİHEK, submitted their opposing views to the Committee on Human Rights Inquiry of the Grand National Assembly of Turkey (GNAT).²³ However, their views were not taken into account. They have a role in combating discrimination. Its decisions are not binding for implementation.

In order for the principle of equal pay for equal work to be applied between men and women, equality between men and women in employment must also be ensured. We are of the opinion that the problem should not be addressed only in terms of legislation. Odds are against women in employment.

Recognition of the Right of All Workers to a Reasonable Period of Notice for Termination of Employment

In Turkish legislation, there are necessary regulations in the Labor Law and the Civil Servants Law. However, upon the declaration of the SoE on 20 July 2016, the government dismissed approximately 135,000 public officials until 19 July 2018, when the SoE ended, with decrees published in the *Official Gazette*, without allowing the dismissed to exercise any of their rights²⁴. In addition to the dismissals by decree, approximately 4,500 judges and prosecutors were dismissed by decisions rendered by the Board of Judges and Prosecutors, an unknown number of thousands of officers and non-commissioned officers were dismissed by the decision of the Supreme Military Council and an unknown number of thousands of people were dismissed by the decision of the highest authority of their related institutions.

With these decrees,

Following the closure of private education institutions operating with the permission of the Ministry of National Education's General Directorate of Private Education Institutions, 22,474 people had their work licenses revoked and were banned from working in any educational institution.

1,064 private educational institutions (kindergartens, primary and secondary schools and high schools), 360 private courses and study centers, 847 student dormitories, 47 private health centers, 15 private foundation universities, 29 trade unions affiliated with 2 confederations, 1,419 associations, 145 foundations, 174 media and broadcasting organizations were closed down. In addition, 985 commercial enterprises were transferred to the Savings Deposit Insurance Fund (TMSF).

99 municipalities, 94 of which belonged to the Democratic Regions Party, were seized by the government and governors or district governors were appointed as trustees.

²³ HRJP. "TİHEK Kanun Tasarısı Hakkındaki Görüşlerimiz." 18 February 2016. <<https://ihop.org.tr/turkiye-insan-haklari-ve-esitlik-kurumu-kanunu-tasarisi-hakkindaki-goruslerimiz/>>

²⁴ HRJP. "Updated Situation Report -State of Emergency in Turkey 21 July 2016-20 March 2018." 25 April 2018. <<https://www.raporlar.org/ihopohalraporu/>>

Approximately 200,000 private sector workers were also laid off due to the closure of institutions and organizations. Their employment contracts were terminated without the right to defense. People dismissed from the public sector have been given the right to apply to the Inquiry Commission on the State of Emergency Measures. According to the latest data released by the Commission on 27 May 2022,²⁵ 127,130 applications were launched before the Commission, 125,678 of which were dismissals from public office, while 106,970 applications were rejected, 17,265 applications were accepted, and the remaining 2,895 files are still under examination. As can be seen, this Commission that was established in 2017 and the Ankara Courts are not effective domestic remedies. Those whose applications have been rejected continue their judicial processes in the specially established Ankara Administrative Courts.

The unlawfulness of the SoE decree laws has been elaborated in detail in İHD's report on these decree laws.²⁶

On 19 July 2018, Law No. 7145 went into effect after the end of the SoE, and dismissals from public institutions continued, just like during the SoE. The implementation of this law has been ongoing for 4 years.

Although the justification for the SoE was stated to be the religiously-oriented Fethullah Gülen organization which organized within the state, Confederation of Public Employees' Trade Unions (KESK) and KESK-affiliated unionized public employees who had nothing to do with the coup attempt and who opposed the coup have also suffered considerably.

According to the report²⁷ on public union rights violations in 2021 published by KESK, 4,239 members of KESK-affiliated unions were dismissed by SoE decree Laws. 1,140 of these people's applications were accepted, 1,604 were rejected and 1,495 are still pending. With Law No. 7145, dismissals from the public sector continued in the post-SoE period and 98 members of KESK were also dismissed from their posts.

The dismissals with the SoE decree Laws and the continuation of the dismissals with Law No. 7145 are in clear violation of the ECHR, the European Social Charter, the UN Covenant on Civil and Political Rights, ILO Conventions No. 111 on Discrimination, No. 135 on Workers' Representatives, No. 151 on Labor Relations (Public Service) and No. 158 on Termination of Employment, all of which entered into force through Article 90 of the Constitution of Turkey.

The 2022 report of the Committee of Experts of the International Labor Organization (ILO) contains serious criticism of Turkey.²⁸

Turkey is under the monitoring of the CoE Committee of Ministers due to the ECtHR judgment in the case of *Urcan and Others v. Turkey* (Application No. 23018/04). The Rule 9.2 submission to the CoE Committee of Ministers by İHD contains serious assessments and criticism.²⁹

²⁵ Inquiry Commission on the State of Emergency Measures. 27 May 2022. <<https://soe.tccb.gov.tr>>

²⁶ İHD-Hüsnü Öndül. "Emergency Decree Laws and Their Impact on Human Rights in Turkey." 13 May 2022. <<https://ihd.org.tr/en/wp-content/uploads/2022/05/EmergencyDecreeLawsReport.pdf>>

²⁷ KESK. "2021 Yılı Kamu Sendikal Hak ihlalleri." 15 January 2022. <<https://kesk.org.tr/2022/01/15/rapor-2021-yili-kamu-sendikal-hak-ihlalleri/>>

²⁸ ILO. "Application of International Labour Standards 2022." 2022. <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf>

²⁹ İHD. Rule 9.2 Submission on *Urcan and Others v. Turkey*. 3 January 2022.

<https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a524df>

Article 21: The Right to Information and Consultation

In Turkey, there was a council where the social partners would come together to discuss economic and social policies. There is the Law No. 4641 on the Establishment, Working Principles and Methods of the Economic and Social Council published in the *Official Gazette* of 21.04.2001.³⁰ Under this law, the Economic and Social Council is required to meet at least once a year. The government, however, has not convened this council for a long time. Moreover, with the Decree Law No. 703 issued during the SoE, the provisions that would have enabled the council to function in practice were abolished. The Council has thus been rendered dysfunctional.

Turkey also has a Public Personnel Advisory Board. This board was established in accordance with Article 21 of Law No. 4688. It holds meetings twice a year. Representatives of the top 3 confederations with the highest number of members representing public employees attend the meeting. The decisions taken at the meeting are advisory. Unfortunately, these decisions are not implemented.

Article 21 of the Occupational Health and Safety Law No. 6331 requires the establishment of a National Occupational Health and Safety Council. However, with the Decree Law No. 703 issued during the SoE, the work of this council was virtually prevented as well. Therefore, workers other than public employees do not have a board or council such as the Public Personnel Advisory Board where they can confer with the government.

The right to information and consultation during the COVID-19 pandemic

After the pandemic started, only some of the relevant social partners were invited to the meeting with the government, and the most significant organizations such as the Turkish Medical Association (TMA), the Union of Chambers of Turkish Architects and Engineers (TMMOB), the Confederation of Public Employees Unions (KESK), the Confederation of Progressive Trade Unions (DİSK) and the Human Rights Association, the oldest human rights organization in Turkey, were not included in these processes. The government had a discriminatory conduct in the committees formed to take pandemic measures and prevented all social partners from being represented.

The TMA, which represents 88% of the physicians in the country, was not invited to the Scientific Committee established within the Ministry of Health either. Yet, the association has been carrying out special studies on this issue.³¹

Article 22: Right to Take Part in the Determination and Improvement of the Working Conditions and Working Environment

The explanations on Article 21 are valid for this article as well.

Especially trade unions and professional organizations were excluded from the process regarding the measures to be taken in workplaces during the pandemic.

³⁰ *Official Gazette*. 21 April 2002.

<<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4641&MevzuatTur=1&MevzuatTertip=5>>

³¹ TMA. <<https://www.ttb.org.tr/kollar/COVID19/>>

During the pandemic, the rights of moto-courier, cargo delivery and post office (PTT) workers to participate in the organization and improvement of their working environment were ignored.

During the pandemic, moto-courier workers were overworked under excessive workload, but when they were excluded from consultation processes regarding wage increases, events and protests were organized.^{32 33}

The increase in the workload of PTT employees was protested by organized union protests and activities, and in response to this, employees were involuntarily transferred to different places.³⁴

Article 26: Right to Dignity at Work

Article 417 of the Turkish Code of Obligations No. 6098 regulates dignity at work.

Article 5 of the Labor Law No. 4857 prohibits discrimination. However, **sexual identity, ethnic background** and **age** are not defined in this article.

Articles 24 and 25 of the Labor Law No. 4857 include sexual harassment as a just cause for termination of the employment contract without notice, while **psychological harassment (mobbing)** is not included.

There is no provision in the Labor Law that directly includes combatting mobbing.

The Civil Servants Law No. 657, which regulates the working relations of millions of public employees, does not include sexual harassment and psychological harassment. In the absence of a regulation, the Office of the Prime Minister had published a circular on the Prevention of Psychological Harassment in the *Official Gazette* of 19 March 2011 (No. 27879). Despite this circular, due to the SoE decree law period and the subsequent implementation of Law No. 7145, public employees work in the face of precarity and uneasiness.

According to the 14 February 2021 mobbing survey conducted by the Association for Combating Mobbing (Mobbing ile Mücadele Derneği) and the Turkish Public Sector Union (Türkiye Kamu Sen), the rate of those who state that measures against mobbing are not taken in public institutions is 79%, while the rate of those who state that they are taken is 9%, and the rate of those who are undecided is 12%.³⁵ The survey conducted by the same association in cooperation with the online newspaper *Para-Medya* in the banking sector

³² *Bianet*. "Hundreds of delivery workers protest e-commerce company over low wage increases." 24 January 2022. <<https://bianet.org/5/98/256687-hundreds-of-delivery-workers-protest-e-commerce-company-over-low-wage-increases>>

³³ NTV. "Motokuryeler için yeni düzenleme yolda: Eylemler BTK'yı harekete geçirdi." 7 February 2022. <<https://www.ntv.com.tr/galeri/turkiye/motokuryeler-icin-yeni-duzenleme-yolda-eylemler-btkyi-harekete-gecirdi,FY0vQY5e1kS8eW1UNLqpOQ/4TD2a3X4yUqIA7JjqAGB5g>>

³⁴ Haber-Sen. "UNI'den Haber-Sen'e Dayanışma Mesajı." <<https://habersen.org.tr/2016/ozel-haber/uni-den-sendikal-haklar-ve-emek-mucadelesi-icin-haber-sene-dayanisma-mesaji/>>

³⁵ Mobbing ile Mücadele Derneği & Türkiye Kamu Sen. "Memur Mobbing Anketi." 14 February 2021. <<https://mobbing.org.tr/memur-mobbing-anketi/>>

contains even more grave results. According to the survey, 94.8% of banking employees state that mobbing measures are not taken in the workplace.³⁶

Law No. 6701 sets forth combating discrimination among the duties of TİHEK. Article 3 of the Law does not include sexual identity among the grounds for discrimination. TİHEK needs to be restructured in line with the UN Paris Principles. Decisions delivered by TİHEK are not binding.

As explained above, since the SoE in Turkey, which began on 20 July 2016, and the Law No. 7145, which entered into force on 31 July 2018 after the end of the SoE, employees are still being dismissed from the public sector; everyone feels psychologically under pressure in public workplaces because no one has job security. Authorities take employees' statements, and they are dismissed according to the provisional Article 35 amended to the Decree Law No. 375 through Law No. 7145. The rather vague concepts of "connection or liaison" (iltisak / irtibat) in the termination of public employment in Turkey already compel everyone to work in an insecure environment. In fact, the system itself has become a direct form of psychological violence.

There is no gender equality policy document on combating sexual harassment except for a very limited number of private sector workplaces in Turkey. The authorities have merely confined themselves with the provisions in the penal code regulating sexual harassment. However, in order to take measures to prevent sexual harassment in workplaces and to run training processes, policy documents based on gender equality need to be implemented.

Civil society organizations, trade unions and various universities have policy documents on combating sexual harassment. For instance, such documents by İHD,³⁷ Association for Combatting Sexual Violence,³⁸ Sabancı University³⁹, Union of All Municipality and Local Administration Services Employees Union (Tüm Bel-Sen)⁴⁰ can be consulted.

Turkish President Erdoğan's unconstitutional decision on 20 March 2021 to withdraw from the Council of Europe Istanbul Convention has made the fight against sexual harassment more challenging. Lawsuits filed with the Council of State against the president's withdrawal decision by usurping the authority of the parliament are pending. No ruling has been rendered yet.

In order to combat psychological harassment (mobbing), clear regulations are needed in both Law No. 657 and Labor Law No. 4857.

Turkey has not yet ratified and put into force ILO Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work.⁴¹

³⁶ Mobbing ile Mücadele Derneği & *Para-Medya*. 14 February 2021. "Bankacılık Sektörü Mobbing Anketi." <<https://mobbing.org.tr/bankacilik-sektoru-mobbing-anketi-aciklandi/>>

³⁷ İHD. "Policy Paper on the Prevention of Sexist, Repressive Behavior and Mobbing." 21 June 2021. <<https://ihd.org.tr/en/ihd-policy-paper-on-the-prevention-of-sexist-repressive-behavior-and-mobbing/>>

³⁸ Association for Combatting Sexual Violence. "Sexual Harassment and Violence Policy Paper." 2020. <<https://www.stgm.org.tr/en/e-library/sexual-harassment-and-violence-policy-paper>>

³⁹ Sabancı University. "Sexual Harassment Policy Statement." <<https://www.sabanciuniv.edu/en/sexual-harassment-policy-statement>>

⁴⁰ Tüm Bel-Sen. "Tacize Karşı Politika Belgesi." <<http://www.tumbelsen.org.tr/tum-bel-sen-cinsel-tacize-karsi-politika-belgesi/>>

⁴¹ ILO. "ILO Calls for Ratification of Convention on Violence and Harassment in the World of Work!" 6 December 2019. <https://www.ilo.org/ankara/news/WCMS_732037/lang--en/index.htm>

In the public sector, the administrative judiciary requires evidence of severe service defect (*faute lourde de service*) in mobbing-related claims for damages. However, in private law, the Court of Cassation considers even the feeling of harassment, in other words negligence, as grounds for compensation. Such state of affairs poses a major problem for private and public sector workplaces. In the public sector, the legal remedy in combating mobbing is quite challenging.

Article 28: The Right to Workers' Representatives to Protection in the Undertaking Facilities to Be Accorded to Them

Article 24 of the Law No. 6356 on Trade Unions and Collective Labor Agreements provides limited protection for workers' representatives. Article 18 of the Law No. 4688 on Public Officials' Trade Unions also has limited provisions for members and executives of public officials' trade unions.

However, there are problems in practice. In this regard, the judiciary is unable to produce sufficient decisions to realize the purpose envisaged in the laws. In this regard, İHD's Rule 9.2 submission concerning the ECtHR judgment in the case of *Urcan and Others v. Turkey* monitoring process can be consulted.⁴²

Article 29: The Right to be Information and Consultation in the Collective Redundancy Procedures

Article 29 of the Labor Law No. 4857 regulates this issue.

In practice, there are often mass dismissals to deter workers from organizing a union in an enterprise or workplace.

It should be noted that inspections on this issue are not sufficient in Turkey.

Until the law on the prohibition of redundancies during the pandemic was passed, many businesses acted quickly and carried out collective layoffs.

1. Our Opinion on Complementary Information on Group 1 Rights (Employment, Education and Equal Opportunity)

Article 1: The Right to Work

Pursuant to Article 16 of Law No. 5018, the multi-annual budgeting process including a mid-term program is prepared by the Ministry of Development and published in the *Official Gazette* by the cabinet by the end of the first week of September at the latest, covering macro policies, principles, targets and basic economic indicators. None of the data in the

⁴² İHD. Rule 9.2 Submission on *Urcan and Others v. Turkey*. 3 January 2022.

<https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a524df>

Also see: KESK. "2021 Yılı Kamu Sendikal Hak ihlalleri." 15 January 2022.

<<https://kesk.org.tr/2022/01/15/rapor-2021-yili-kamu-sendikal-hak-ihlalleri/>>

mid-term program, each covering a 3-year term, announced by the government in 2017, 2018, 2019, 2020 and 2021, matched the actual figures nor did the data on employment.⁴³

The unemployment and informal employment data, referred to in the introduction to our report, show that the situation in Turkey is not good.

The government's national employment strategy and action plans have not been implemented. The targets envisaged therein have not been achieved. Action plans therefore need to be effectively put into practice.

Turkey generally does not comply with ILO resolutions. This is evident in the annual ILO reports.⁴⁴

Article 10: The Right to Vocational Training

There has been a recovery trend in vocational education in Turkey in recent years. In the report "Pro-Market Mentality in Vocational and Technical Education Must Be Abandoned, Public Education Approach Must Be Adopted" published by the Education and Science Workers Union (Eğitim-Sen) on 28 May 2021, the year 2019 was compared to 2011 and it was seen that there was a significant increase in vocational and technical education, but the report criticized that the understanding of public service was disappearing.⁴⁵

It should also be noted that "İmam Hatip" high schools, which offer religious training to students to become imams, are the most common among vocational high schools. This situation has created a result to the detriment of other vocational high schools.

⁴³ Ministry of Treasury and Finance. "Orta Vadeli Program." <<https://www.hmb.gov.tr/bumko-orta-vadeli-program>>

⁴⁴ ILO. "Application of International Labour Standards 2022." 2022. <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf>

⁴⁵ Eğitim-Sen. "Mesleki ve Teknik Eğitimde Piyasacı Zihniyet Terkedilmeli, Kamusal Eğitim Anlayışı Benimsenmelidir." 28 May 2021. <<https://egitimsen.org.tr/mesleki-ve-teknik-egitimde-piyasaci-zihniyet-terkedilmeli-kamusal-egitim-anlayisi-benimsenmelidir/>>