



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

TÜRKIYE

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, are contained in the General Introduction to all Conclusions.

The following chapter concerns Türkiye, which ratified the Revised European Social Charter on 27 June 2007. The deadline for submitting the 14th report was 31 December 2021 and Türkiye submitted it on 15 April 2022.

The Committee recalls that Türkiye was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2018).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2018) found the situation to be in conformity, there was no examination of the situation in 2022.

Comments on the 14th report by the Human Rights Association (İHD) were registered on 30 June 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

Türkiye has accepted all provisions from the above-mentioned group except Articles 2§3, 4§1, 5 and 6.

The reference period was from 1 January 2017 to 31 December 2020.

The conclusions relating to Türkiye concern 16 situations and are as follows :

– 5 conclusions of conformity: Articles 2§2, 2§4, 2§5, 2§7 and 29,

– 8 conclusions of non-conformity: Articles 2§1, 4§2, 4§3, 4§4, 21, 22, 26§1 and 28.

In respect of the other 3 situations related to Articles 2§6, 4§5 and 26§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Türkiye under the Revised Charter.

The next report from Türkiye will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),

- the right of children and young persons to social, legal 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).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

The Committee takes note of the information contained in the report submitted by Türkiye and in the comments of Human Rights Association (İHD).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Türkiye was not in conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time could exceed 60 hours in flexible working time arrangements (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

Previously, the Committee found the situation in Türkiye not to be in conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time could exceed 60 hours in flexible working time arrangements (Conclusions 2018).

In reply, the report states that although the weekly working time may exceed 60 hours in flexible working time arrangements, there is a reference period of two months (four months in the tourism sector).

The Committee notes that the situation has not changed and reiterates its conclusion of non-conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time can exceed 60 hours in flexible working time arrangements.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

The Committee recalls that teleworking or remote working may lead to excessive working hours. It also reiterates that it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the ‘right to disconnect’). States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform. In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods (Statement on digital disconnect and electronic monitoring of workers).

The report states that, as a rule, working time is a maximum of 45 hours per week, except for workers in the underground mining industry, pregnant or nursing women (37.5 hours weekly). Daily working time must not exceed 11 hours. The weekly working time for civil servants is generally 40 hours. Compensatory work is also possible when the time worked is considerably lower than normal working time. Shift work may occur but daily working hours cannot be exceeded. Night work cannot exceed 7.5 hours, except in the sections of tourism, private security and health sectors. However, in that case, the worker’s consent must be obtained. A 15-minute rest break has to be given when work lasts 4 hours or less; 30 minutes when the work lasts between 4 and 7.5 hours, and 1 hour when work lasts for more than 7.5 hours.

The report further states that the Directorate for Guidance and Inspection carries out inspection activities. If a violation is found, it has to be remedied and, if this is not done, an administrative fine can be imposed on the employer. With regard to working time regulations, between 2017 and 2019, 18,521 inspections were carried out and 3,304 workplaces were fined. In 2020, 5,333 inspections were carried out and 1,466 workplaces were fined.

The Committee asks in what sectors of economic activity the majority of inspections were carried out.

In its comments, the İHD states that physicians working in university hospitals, resident doctors, security sector workers, police officers are overworked and that it is not compatible with Article 2§1 of the Charter. It also states that inspections of private sector workplaces are not effective.

Law and practice regarding on-call periods

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that all the periods during which the worker remains at the employer's disposal is considered working time. The Committee asks whether this means that if a worker is at home on inactive on-call, this period is also considered working time.

The Committee notes that no information is provided on zero-hour contracts.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that provisions on remote work were introduced in the Labour Law on 6 May 2016 and because of Covid-19, the percentage of remote workers increased in Türkiye. The report describes in detail the Regulation on Remote Work, published in the Official Gazette on 10 March 2021; however, it is outside the reference period for the purposes of the present reporting cycle.

The report further states that, in the public sector, remote work and shift work were introduced and applied between 23 March 2020 and 1 June 2020, from 27 August 2020 to 2 March 2021, and between 15 April 2021 and 1 July 2021. During those periods, people over 60, pregnant women, people with chronic diseases were granted administrative leave. Female civil servants with children under 10 years of age were allowed to work from home.

The report provides some information on the healthcare sector, but it appears that the rules have not changed on account of the Covid-19 pandemic.

In its comments, the İHD states that measures taken during the Covid-19 pandemic were not sufficient. Healthcare workers, for example, stayed at their workplace for periods of 15 days in order not to contaminate their families. Although were partially compensated for overtime, it was not enough.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time can exceed 60 hours in flexible working time arrangements.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

Article 2 - Right to just conditions of work
Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee recalls that no targeted questions were asked for Article 2§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in Türkiye to be in conformity with the Charter (Conclusions 2018), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to public holidays with pay.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

Conclusion

The Committee concludes that the situation in Türkiye is in conformity with Article 2§2 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

The Committee recalls that no targeted questions were asked for Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Türkiye to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Türkiye is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Türkiye to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Türkiye is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

The Committee takes note of the information contained in the report submitted by Türkiye and the comments submitted by the Human Rights Association.

The Committee recalls that no targeted questions were asked for Article 2§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee found that the situation in Türkiye was in conformity with Article 2§6 of the Charter, pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The Committee previously asked for a clear indication as to whether civil servants received, upon starting the employment relationship or soon thereafter, written information referring to the applicable legislative provisions and including therefore the elements of information required under Article 2§6 of the Charter (Conclusions 2018).

The report notes that civil servants may be employed with temporary or permanent contracts. As for those in the former category, they receive a contract covering working terms upon starting their employment. As for those in the latter category, they receive information on the terms of their employment as part of training courses organised during their induction period, which may last from one to two years. The report does not, therefore, offer explicit confirmation, as sought by the Committee, that civil servants from either category receive the elements of information in writing as required under Article 2§6 of the Charter. The Committee, therefore, reiterates its request for a clear indication as to whether all the elements of information required by Article 2§6 of the Charter are provided in writing to public servants, whether temporary or permanent, when starting employment. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Türkiye is in conformity with Article 2§6 of the Charter.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 - Right to just conditions of work
Paragraph 7 - Night work

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee recalls that no targeted questions were asked for Article 2§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee found that the situation in Türkiye was in conformity with Article 2§7 of the Charter, pending receipt of information on whether representatives elected by workers pursuant to Article 20 of Law No. 6331 of 20 June 2012 on occupational health and safety are consulted on night work (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The report notes in response to the Committee’s question that the workers’ representatives are involved in consultations on the topic of night work as part of their broader mandate, which includes receiving information and raising issues related to health and safety in the workplace.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

The Committee concludes that the situation in Türkiye is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Türkiye was not in conformity with Article 4§2 of the Charter on the ground that civil servants were not entitled to an increased time off in lieu of remuneration for overtime hours (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

Rules on increased remuneration for overtime work

Previously, the Committee found that the situation in Türkiye was not in conformity with Article 4§2 of the Charter on the ground that civil servants were not entitled to an increased time off in lieu of remuneration for overtime hours (Conclusions 2018).

The report states that for civil servants the duration of overtime work and the remuneration to be paid per hour are determined each year by the decision of the President of the Republic of Türkiye. Also, according to Article 178 of Civil Servants Law, public institutions may employ their personnel outside of daily working hours, if necessary, without overtime pay and in this case the personnel is allowed one day of rest for every eight hours of work.

The Committee notes that the situation in Türkiye has not changed and reiterates its conclusion of non-conformity on the ground that civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that overtime work in connection with teleworking is possible only upon the agreement of the worker.

The report further states that in the healthcare sector workers received additional payments with an increase of 20%.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 4§2 of the Charter on the ground that civil servants are not entitled to increased time off in lieu of remuneration for overtime hours.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of non conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

In its previous conclusion (Conclusion 2018), the Committee asked whether domestic law prohibits both direct and indirect discrimination.

In response, the report indicates that Article 5 of the Labour Code prohibits direct and indirect discrimination.

Effective remedies

In its previous conclusion (Conclusion 2018), the Committee noted that there was no ceiling to the compensation that may be awarded under the Civil Code and the Code of Obligations in equal pay cases but asked for confirmation that this was the case. It also asked for information on pay discrimination cases decided by the courts and the level of compensation awarded for pecuniary and non-pecuniary damages.

In response, the report provides the information examined in the previous conclusions (see Conclusions 2018 and 2016 on Article 4§3 and Conclusions 2020 on Article 20). In view of the above, the Committee reiterates its questions. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Türkiye is in conformity with Article 4§3 of the Charter in this respect.

The Committee also asks whether the obligation to compensate for the difference of pay is limited in time or is awarded for the entire period of unequal pay.

In its previous conclusion (Conclusion 2018), the Committee also asked whether the law provided that the burden of proof shifts to the defendant in the proceedings before national courts in the event that a victim of possible discrimination demonstrates facts from which it may be presumed that discrimination has occurred.

In response, the report indicates that under Article 5§7 of the Labour Code, the burden of proof is shifted from the worker to the employer in cases of the violation of Article 5 of the Law, if

the worker indicates “a strong likelihood of such a violation”. In addition, the Committee noted previously (Conclusions 2018) that, pursuant to Article 21 of the Law on the Human Rights and Equality Institution, if an applicant provides sound and convincing evidence in support of his/her allegation, it is then for the other party to demonstrate that the principles of non-discrimination and equal treatment have not been breached. The Committee asks how the principle of shifting the burden of proof is applied in practice, for example, whether it is systematically applied in the case of pay discrimination. In the meantime, it reserves its position on this issue.

Pay transparency and job comparisons

In its previous conclusion (Conclusions 2018), the Committee asked whether the law prohibited discriminatory pay clauses in collective agreements, as well as whether the pay comparison were possible across companies. It also asked for information concerning the criteria used to evaluate the equal value of different work.

The report does not contain any information in response to the first question. The Committee refers to its conclusion on Article 20 (Conclusions 2020) on this issue and repeats its question.

In response to the second question, the report indicates that the according to the Labour Law and the Code of Obligations, the employer is obliged to determine the remuneration of a worker on the basis of the remuneration of a comparable employee in the context of the implementation of the principle of equal pay for equal work or work of equal value. The Committee previously noted that the comparable employee is the one who is employed under an open-ended contract in the same or a similar job in the establishment. (Article 12 of Labour Law). The report adds that the implementation of the equal pay principle is limited to the establishment defined in Article 2 of the Labour Law as the unit wherein the employees and material and immaterial elements are organised with a view to ensuring the production of goods and services by the employer. In view of the above, the Committee understands that Article 12 points to a comparator.

The report does not contain any information in response to the third question. The Committee refers to its conclusion on Article 20 (Conclusions 2020) on this issue where it noted that Article 5(4) of the Labour Code does not set any parameters for establishing the equal value of the work performed; however, employers are required to establish and implement a job assessment system to identify work of equal value in the workplace.

In addition, the Committee notes from the national report on gender equality in Türkiye drawn up by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2022), that a job classification system is only regulated in the Civil Servants Act and it is used for determining the pay of civil servants. It has already noted that most employers in the private sector do not have job classification or job description schemes, nor have they conducted an evaluation of every profession or post. As it has already asked in its conclusion on Article 20 (Conclusions 2020), the Committee repeats its request for detailed information in the next report on the parameters making it possible to establish the equal value of work carried out in the private and public sectors.

In the meantime, the Committee finds that the situation is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that the principle of pay transparency is guaranteed in practice.

Statistics and measures to promote the right to equal pay

The report does not provide any statistical data on equal pay gap during the reference period.

As Türkiye has accepted Article 20.c, the Committee examines policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value

In response to the question on the impact of Covid-19 on the right of men and women workers to equal pay for work of equal value, the report does not provide any information. However, it indicates that Türkiye has implemented the “Social Protection Program”, according to which all citizens have the right, without any discrimination, to equal protection from the negative consequences of the Covid-19. The Committee notes that more than 60% of the recipients of social assistance under this Program are women.

The Committee refers to its statement on Covid-19 and Social Rights of 24 March 2021.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that the principle of pay transparency is guaranteed in practice.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Türkiye and in the comments by the Human Rights Association.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Türkiye was not in conformity with Article 4§4 of the Charter. (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers’ length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
 - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
 - during any probationary periods, including those in the public service;
 - with regard to the treatment of workers in insecure jobs;
 - in the event of termination of employment for reasons outside the parties’ control;
 - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

Reasonable period of notice: legal framework and length of service

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

In reply to the targeted question, the report states that during the Covid-19 pandemic, a temporary restriction on the termination of labour agreements was implemented as part of the job-retention policy.

In its previous conclusion the Committee concluded that the situation in Türkiye was not in conformity with Article 4§4 of the Charter on the grounds that (i) a two weeks' notice period is not reasonable for workers with more than six months and less than one year of service employed in agriculture and forestry in enterprises with fewer than 50 workers; (ii) a six weeks' notice period is not reasonable for workers with more than five years of service employed in agriculture and forestry in enterprises with fewer than 50 workers (Conclusions 2018).

In its comments, the Human Rights Association states that many public and private sector workers were dismissed without allowing them to exercise any of their rights.

In reply to the previous conclusion of non-conformity, the report details the minimum notice periods provided for in the Code of Obligations, which can be extended through contracts between the parties. The Committee notes that such minimum notice periods are applicable to workers employed in agriculture and forestry in enterprises with less than 50 workers. As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee considers that the minimum two weeks' and six weeks' notice periods provided for in the Code of Obligations are not manifestly unreasonable and allow the person concerned a certain time to look for other work before his or her current employment ends. The Committee therefore considers that the situation in Türkiye is in conformity with Article 4§4 of the Charter in this respect.

Notice periods during probationary periods

In its previous conclusion the Committee concludes that the situation in Türkiye was not in conformity with Article 4§4 of the Charter on the ground that no notice period is required for dismissal during a probationary period (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that, according to Article 15 of Labour Law No. 4857, the trial period for the employment contract is defined as two months. However, it may be extended up to four months by collective agreement. Within the trial period, both parties are free to terminate the employment contract without having to comply with the termination period and without having to pay compensation. The worker's entitlement to wages and other rights for the days worked is preserved. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Notice periods with regard to workers in insecure jobs

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Notice periods in the event of termination of employment for reasons outside the parties' control

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 4§4 of the Charter on the ground that there is no notice period for workers on probation.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee recalls that no targeted questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information, were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee recalls that the deductions envisaged in Article 4§5 can only be authorised in certain circumstances which must be well-defined in a legal instrument (for instance, a law, regulation, collective agreement or arbitration award (Conclusions V (1977), Statement of Interpretation on Article 4§5). The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). With a view to making an in-depth assessment of national situations the Committee has considered it necessary to change its approach. Therefore, the Committee asks States Parties to provide the following information in their next reports:

- a description of the legal framework regarding wage deductions, including the information on the amount of protected (unattachable) wage;
- Information on the national subsistence level, how it is calculated, and how the calculation of that minimum subsistence level ensures that workers can provide for the subsistence needs of themselves and their dependents.
- Information establishing that the disposable income of a worker earning the minimum wage after all deductions (including for child maintenance) is enough to guarantee the means of subsistence (i.e., to ensure that workers can provide for the subsistence needs of themselves and their dependents).
- a description of safeguards that prevent workers from waiving their right to the restriction on deductions from wage.

Legal framework concerning deductions from wages and the protected wage

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter as 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.

The Committee notes from the report that according to Article 35 of the Labour Law No. 4857, more than 25% of the monthly wage of a worker cannot be seized, transferred or assigned to a third party. However, maintenance allowances awarded by a judge to the members of the worker’s family shall not be included in this sum.

The Committee further notes that, according to Article 38 of the Labour Law No. 4857, the employer cannot impose a deduction from wages, except for the reasons indicated in the collective agreement or labour agreements. When deductions are imposed on a worker as a sanction, the worker must be informed immediately of the measure and the reasons for it. In such cases, the deductions cannot exceed two days of the worker’s wage.

The Committee asks next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government. In the meantime, the Committee reserves its position on this point.

Waiving the right to the restriction on deductions from wage

The Committee noted in its Conclusions 2014 that any decision to waive the right to the limit wage deductions was null and void. The Committee also notes from the report in this regard that the employer cannot unilaterally decide to reduce the wages of the worker. The worker's consent must be obtained for possible reductions in his/her wage. Furthermore, according to Article 407, paragraph 2 of the Turkish Code of Obligations (No. 6098) the worker's debt to the employer cannot be exchanged for the wage that the employer is obliged to pay to the worker. Any deduction from wages without the worker's consent shall constitute an underpayment of wages. No debts/losses can be recovered from the wages of the worker without a court decision for deductions that do not fall within the special circumstances provided for by law.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Türkiye. It also takes note of comments submitted by the Human Rights Association.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2018), pending receipt of information requested. The assessment of the Committee will therefore concern the information provided by the Government in response to the question raised in its previous conclusion, and to the targeted questions.

The Committee recalls that Article 21 secures the right of workers to information and consultation within the undertaking, so that they are enabled to influence the company decisions which substantially affect them and that their views are considered when such decisions are taken, such as changes in the work organisation and in the working conditions.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides in reply that various measures of general nature were taken at the time of the pandemic. It provides information on a remote work employment contract overtime work, as well as on awareness measures, such as establishment of a Covid-19 information platform or dissemination and information activities through social media. The report also refers to sectoral measures taken in sectors mostly hit by the crisis (such as agriculture, law enforcement, health, transportation, tourism). The Committee notes, however, that this information concerns mostly measures of general nature and only marginally the right of workers to be informed and consulted.

The Committee also notes in this respect a comment made by the Human Rights Association, alleging that during the pandemic, only some of the relevant social partners were invited to the meeting with the government, and the most significant organizations were not included in these processes. According to the HRA, the government had a discriminatory conduct in the committees formed to take pandemic measures and prevented all social partners from being represented.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 21 of the Charter.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 21 of the Charter on the ground that the material scope of right of information and consultation under

the legal framework does not cover information with regard to the economic and financial situation of the undertaking.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Türkiye. It also notes comments by the Human Rights Association.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

The Committee deferred its previous conclusion pending receipt of the information requested (see Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted question.

In its previous conclusions (Conclusions 2018), the Committee reiterated its request that the next report indicate what happens in undertakings where there are no trade union representatives who according to the Law on Trade Unions and Collective Labour Agreement have to inform employees on relevant labour legislation, resolve workers’ complaints, ensure working cohesion between workers and employers, observe the rights and benefits of workers, facilitate the application of working conditions envisaged in labour law and collective agreements and ensure consensus among employees in respect of work organisation and working environment. The report does not provide any information in this respect. The Committee considers that it has not been established that the right of workers to take part in the determination and improvement of working conditions and working environment is adequately guaranteed in law and practice.

The Committee has also previously asked what the competences of the administration boards established according to Article 22 of the Law on Public Employees and Collective Agreement No. 4688 are in relation to the right of workers to take part in the determination and improvement of working conditions and working environment. The report solely states that administrative fines are imposed in case of the violation of the right to express opinions on the improvement of the working conditions and working environment of the employees and provides relevant statistics. The Committee considers that this information is not sufficient to fully assess whether the requirements of Article 22 have been complied with in this respect. It thus reiterates its request for comprehensive information and considers that should it not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides information on measures taken during the Covid-19 pandemic, including in mostly affected sectors, such as transport and health care. The Committee notes that the information concerns measures of general nature and not specifically refers to the right to take part in the determination and improvement of the working conditions and working environment. In this respect, the Committee notes the comment from the Human Rights Association that

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

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 22 of the Charter.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 22 of the Charter on the ground that it has not been established that the right of workers to take part in the determination and improvement of working conditions and working environment is adequately guaranteed in law and practice.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee takes note of the information contained in the report submitted by Türkiye, and in the comments submitted by the Human Rights Association (İHD).

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 26§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee deferred its conclusion, pending receipt of the information requested (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

Prevention

For this monitoring cycle, the Committee welcomed information on awareness-raising and prevention campaigns as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee reiterated its request for information on preventive measures taken in order to ensure effective protection from sexual harassment and on whether and to what extent employers’ and workers’ organisations were consulted in the promotion of measures regarding the awareness, information and prevention of sexual harassment in the workplace (Conclusions 2018). It pointed out that, in the absence of information in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect (Conclusions 2018).

No information is provided on awareness-raising activities and prevention measures on sexual harassment specifically, whether taken by the TIHEK or Government institutions. The Committee also notes that in its comments, the Human Rights Association (İHD) states that there are no policy documents on combating sexual harassment, except for a very limited number of private-sector workplaces.

The Committee notes that the report does not provide information demonstrating how employers implement their obligations to take preventive measures and whether, and to what extent, employers’ and workers’ organisations are consulted in the promotion of measures on the awareness, information and prevention of sexual harassment in relation to work. In the absence of such information, the Committee considers that the situation in Türkiye is not in conformity with Article 26§1 of the Charter on the grounds that: (i) it has not been established that preventive measures are being taken in order to ensure effective protection from sexual harassment in relation to work; and (ii) it has not been established that employers’ and workers’ organisations are consulted on measures to promote awareness, information and prevention of sexual harassment in relation to work.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat sexual abuse in the framework of work or employment relations.

The report does not indicate any changes in the regulatory framework relating to sexual harassment during the reference period. The Committee refers to its previous conclusions and the related national reports for a description of the relevant legal framework and the remedies available to victims of sexual harassment (Conclusions 2014, 2016 and 2018).

The Committee notes that, in its Concluding observations on the eight periodic report of Türkiye of 12 July 2022, the CEDAW expressed its concern over the lack of measures to address sexual harassment in the workplace, especially that of young women and lesbian, bisexual, transgender and intersex women, including the low number of investigations in sexual harassment cases. The CEDAW recommended that the Labour Act and the Penal Code be amended to explicitly criminalise sexual harassment in the workplace and to ensure that victims of sexual harassment in the workplace have access to effective, independent and confidential complaint procedures and that all complaints are effectively investigated, that perpetrators are prosecuted and duly punished, and that victims are protected against reprisals (see CEDAW, Concluding observations on the eight periodic report of Türkiye, paras 45-46, CEDAW/C/TUR/CO/8).

The Committee further notes that the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination states that there is little case law on harassment and sexual harassment, because victims cannot prove such harassment, or they fear victimisation and/or do not want to risk acquiring a 'bad reputation' on the labour market. The Committee asks for examples of cases of sexual harassment brought to TIHEK, the labour inspectorates and the courts, as well as information regarding their outcome. In the meantime, it reserves its position on this point.

The Committee further notes from the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination that mandatory mediation in labour disputes, including sexual harassment was introduced in 2017 by the Labour Courts Act (Article 3).

The Committee recalls that domestic law must guarantee workers effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation, and the right not to be retaliated against for upholding these rights (Conclusions 2007, Statement of Interpretation on Article 26). The Committee considers that the mandatory recourse to mediation for victims of work-related sexual harassment as a precondition before they can initiate court proceedings does not constitute an adequate remedy. It asks what measures are in place to ensure adequate protection for victims of sexual harassment and to guarantee their right to appeal to an independent body.

As regards the right not to be subjected to reprisals for upholding the right to be protected from sexual harassment, the Committee, in its previous conclusion, asked whether this is covered by the employer's obligation, under Article 417 of the Code of Obligations to protect victims of harassment from further harm and how this clause had been interpreted in the case-law (Conclusions 2018). The report does not provide the requested information. The Committee asks for the next report to provide information on whether victims of sexual harassment enjoy protection against any retaliation for upholding their rights in cases of sexual harassment. It points out that, if the next report does not provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

With regard to the burden of proof, in its previous conclusion, the Committee noted that Article 5 of the Labour Code requires the employee to prove that there was a breach of equal treatment by the employer but, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer (Conclusions 2018). The Committee asked the next report to clarify whether this involves a shift in the burden of proof in practice in such proceedings (Conclusions 2018). It also asked whether this applies to all civil law claims brought in respect of sexual harassment, including under other provisions of the Labour Code, or under Articles 24-25 of the Civil Code and the Code of Obligations (Conclusions 2018).

The report does not provide the requested information.

The Committee notes that Article 21 (1) of Law No. 6701 on Human Rights and Equality Institution provides that when the Institution receives a claim alleging discrimination, if the applicant reveals “the existence of strong indications and presumptive facts” pointing to the truth of the claim, the other party must prove that they have complied with the prohibition of discrimination and the principle of equal treatment.

The Committee recalls that under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges (Conclusions 2007, Statement of Interpretation on Article 26).

The Committee notes that under both Article 5 of the Labour Code and Article 21(1) of the Law No. 6701 on Human Rights and Equality Institution, in order for the burden of proof to be shifted to the employer, the employee has to present *strong indications* of a violation by the employer. The Committee asks how these legal provisions are interpreted in practice and whether *prima facie* evidence of sexual harassment presented by the employee is sufficient in order that the burden of proof is shifted to the employer in cases of sexual harassment in front of the courts or the Human Rights and Equality Institution. In the meantime, it reserves its position on this point.

Damages

In a targeted question, the Committee asked whether any limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages.

In its previous conclusion, the Committee asked for the next report to clarify whether any ceilings apply to the compensation which can be awarded, in particular with regard to the amount awarded for moral damages awards (Conclusions 2018).

The report states that under Article 5(6) of the Labour Law No. 4857, if the employer violates the principle of equal treatment defined in Article 5 when performing or terminating the employment relationship, the employee may claim for compensation of up to four months' wages. The worker may claim compensation for material and moral damages suffered, in accordance with the general provisions, as well as for the rights of which she/he has been deprived as a result of discrimination. In addition, the employer incurs an administrative fine for each worker concerned in the event of non-compliance with the principle of equal treatment enshrined in Article 5 according to Article 99 of Labour Law No. 4857.

The report indicates that although an upper limit is defined for compensation for discrimination and an administrative fine is applied in the event of infringement of the principle of equal treatment enshrined in Article 5, there is no limit on compensation for material and moral damages that the victims of sexual and psychological harassment may claim.

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. In particular, these remedies must allow for appropriate compensation, the amount of which must be sufficient to compensate the victim's pecuniary and non-pecuniary damage and serve as a deterrent to the employer.

The Committee asks for the next report to confirm that there is no ceiling on either material or moral damages that victims of sexual harassment can claim. It also requests examples of case law on sexual harassment and that the report illustrate their outcome specifying the amounts of damages actually awarded to victims.

As regards reinstatement, the Committee notes that, under Article 24 of the Labour Code, victims of (sexual or moral/psychological) harassment have the right to terminate their employment contract and obtain a severance pay equivalent to four months' salary, plus the restoration of the rights they have been deprived of as a result of the discriminatory treatment (Conclusions 2014). The Committee noted that, in addition, under Article 20 of the Labour

Code, workers who have been unfairly dismissed can request their reinstatement (Conclusions 2018). The Committee asked whether this right applies also when the worker has resigned because of the sexual harassment suffered, whether the termination of contract has formally taken place invoking Article 24 of the Labour Code or not (Conclusions 2018). The report does not provide the requested information.

The Committee notes from the *Country report on gender equality 2022* of the European network of legal experts in gender equality and non-discrimination, that failure to comply with the provisions on gender equality in employment may end with the termination of the employment contract or disciplinary sanctioning of the perpetrator, fines for the employer or his/her representatives, the reinstatement and/or compensation for the claimant who has been subjected to discrimination or dismissed or has been pressured to resign.

Covid-19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report provides no information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual harassment.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 26§1 of the Charter on the grounds that:

- it has not been established that preventive measures are taken in order to ensure effective protection from sexual harassment in relation to work;
- it has not been established that employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in relation to work.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Türkiye, and in the comments submitted by the Human Rights Association (İHD).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee deferred its conclusion, pending receipt of the information requested (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

Prevention

For this monitoring cycle, the Committee welcomed information on awareness-raising and prevention campaigns as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

The report provides information on the awareness-raising activities carried out by the Human Rights and Equality Institution (the “TIHEK”), such as an international workshop on “Combating discrimination at work” held in Ankara in April 2019 and an information note on mobbing in the workplace which was published on the TIHEK’s website. The report further indicates that the Board on Combating the Psychological Harassment prepared and implemented the Action Plan for Combating Psychological Harassment in the Workplace (2018-2020) in order to guide its work within the scope of combating psychological harassment in the workplace. The Committee asks for information on concrete awareness-raising and prevention campaigns carried out in the context of the Action Plan for Combating Psychological Harassment in the Workplace.

In its previous conclusion, the Committee asked whether and to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of moral (psychological) harassment in the workplace (Conclusions 2018). The report does not respond to this question. The Committee reiterates its question and points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat moral (psychological) harassment in the framework of work or employment relations.

The report does not indicate any change in the regulatory framework on moral (psychological) harassment during the reference period. The Committee refers to its previous conclusions and the related national reports as regards the relevant legal framework and the procedures available to victims of sexual harassment (Conclusions 2014, 2016 and 2018).

As regards the right not to be retaliated against for upholding the right to protection from moral (psychological) harassment, in its previous conclusion, the Committee asked whether this is covered by the employer’s obligation, under Article 417 of the Code of Obligations, to protect victims of harassment from further harm. It also asked how this clause has been interpreted in the case-law (Conclusions 2018). The report does not provide the requested information. The Committee asks that the next report provide information on whether victims of moral

(psychological) harassment enjoy protection against any reprisals for upholding their rights in cases of moral (psychological) harassment. It points out that if the next report does not provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

With regard to the burden of proof, the Committee noted in its previous conclusion that, according to Article 5 of the Labour Law, the employee is responsible to prove that there was a breach of equal treatment by the employer; however, if the employee can show a strong likelihood of such a breach, then the burden of proof that the alleged violation has not materialised shall rest on the employer (Conclusions 2018). The Committee asked for the next report to clarify whether this involves a shift in the burden of proof in practice in such proceedings (Conclusions 2018). It also asked whether this applies to all civil law claims brought in respect of moral (psychological) harassment, also under different provisions of the Labour Code, or under Articles 24-25 of the Civil Code and the Code of Obligations (Conclusions 2018).

The report does not provide the requested information.

The Committee notes that Article 21 (1) of Law No. 6701 on Human Rights and Equality Institution provides that: in the applications made to the Institution alleging discrimination, if the applicant reveals “the existence of strong indications and presumptive facts” regarding the truth of his/her claim, the other party must prove that they have not violated the prohibition of discrimination and the principle of equal treatment.

The Committee recalls that, under civil law, the effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges (Conclusions 2007, Statement of Interpretation on Article 26).

The Committee notes that under both Article 5 of the Labour Code and Article 21(1) of the Law No. 6701 on Human Rights and Equality Institution, in order for the burden of proof to be shifted to the employer, the employee has to present *strong indications* of a breach committed by the employer. The Committee asks how these legal provisions are interpreted in practice, and whether *prima facie* evidence of moral (psychological) harassment presented by the employee is sufficient for the burden of proof to be shifted to the employer in cases of moral (psychological) harassment brought before the courts or the Human Rights and Equality Institution. Meanwhile, it reserves its position on this point.

Damages

In a targeted question, the Committee asked whether any limits apply to the compensation that might be awarded to the victim of moral (psychological) harassment for moral and material damages.

In its previous conclusion, the Committee asked that the next report clarify whether any ceilings apply to the compensation which can be granted, in particular as regards moral damages awards (Conclusions 2018).

The report indicates that under Article 5(6) of the Labour Law No. 4857, if the employer violates the principle of equal treatment defined in Article 5 in the or termination of the employment relationship, the employee may demand compensation up to four months' wages. The worker may demand compensation for material and moral damages in accordance with the general provisions, as well as the restoration of the rights of which she/he has been deprived as a result of discrimination. In addition, the employer is liable for an administrative fine for each worker in the event that the former has failed to comply with the principle of equal treatment enshrined in Article 5, according to Article 99 of Labour Law No. 4857.

The report indicates that although an upper limit is defined for the discrimination compensation and an administrative fine is applied in the event of an infringement of the principle of equal

treatment enshrined in Article 5, there is no limit on the compensation for material and moral damages that the victims of sexual and psychological harassment may request.

The Committee notes from the *Country report on non-discrimination (Türkiye) 2022* of the European network of legal experts in gender equality and non-discrimination that according to Article 21 of the Labour Law, if a court or arbitrator concludes that a dismissal is invalid (because it was based on discrimination, among other reasons), the employer must reinstate the employee within one month. If, upon the application of the employee, the employer does not re-engage the employee in work, compensation of not less than four months' wage and not more than eight months' wage must be paid to the employee by the employer. In its judgment ruling the dismissal invalid, the court shall designate the amount of compensation to be paid to the employee if they are not re-engaged. The same report outlines that if employers violate Article 5 of Labour Law prohibiting discrimination, employees may demand compensation of up to four months' wage plus other benefits from which they have been deprived, with the possibility of shifting the burden of proof in such a case. It also states that moral damages cannot be claimed.

The Committee recalls that victims of moral (psychological) harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

The Committee asks that the next report confirm that there is no ceiling on both material and moral damages that victims of moral (psychological) harassment can claim. It asks for the next report to provide examples of case law on moral (psychological) harassment and illustrate their outcome with the amounts of damages actually awarded to victims.

As regards reinstatement, the Committee noted that, under Article 24 of the Labour Code, victims of (sexual or moral/psychological) harassment have the right to terminate their employment contract and obtain severance pay equivalent to four months' salary, plus the restoration of the rights they have been deprived of as a result of the discriminatory treatment (Conclusions 2014). In addition, under Article 20 of the Labour Code, workers who have been unfairly dismissed can request their reinstatement (Conclusions 2018). The Committee asked whether this right applies also when the worker has resigned because of the moral (psychological) harassment suffered, whether or not the dismissal had been formalised invoking Article 24 of the Labour Code. The report does not provide the requested information.

The Committee notes in the *Country report on non-discrimination 2022* of the European network of legal experts in gender equality and non-discrimination that when psychological abuse occurs in the workplace, the victim may apply to terminate their employment contract by agreement; demand compensation for discrimination; immediately terminate their employment contract for a justified reason; request the invalidity of unilateral termination by the employer; or claim compensation.

Covid -19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards moral (psychological) harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report provides no information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards moral (psychological) harassment.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

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

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee points out that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In previous conclusions (Conclusions 2018), the Committee concluded that the situation in Türkiye was not in conformity with Article 28 of the Charter on the grounds that the protection granted to workers' representatives was not extended for a reasonable period after the expiration of their mandate and that it had not been established that facilities granted to workers' representatives are adequate. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Protection granted to workers' representatives

In the previous conclusions (Conclusions 2018), the Committee noted, on the basis of the national report, that the protection from dismissal was granted solely for the duration of the workers' representatives' mandate. Recalling that this protection shall be extended for a reasonable period after the effective term of office, the Committee concluded that the situation was not in conformity with the Charter in this respect.

The report confirms that the protection of workers' representatives against dismissal is limited to their duty period and that no amendments were made to relevant legislation in this respect. The Committee recalls that the protection afforded to the workers' representatives shall be extended for a reasonable period after the effective end of their term of office and, accordingly, maintains its finding of non-conformity that the situation is not in conformity with the Charter in this respect.

Concerning the protection of workers' representatives against detrimental treatment other than dismissal, in the previous conclusions (Conclusions 2018), the Committee asked that the next report provide more information on whether this protection entails all prejudicial acts, such as for instance, denial of certain benefits, training opportunities, promotions and transfers, discrimination when issuing lay-offs or assigning of retirement options, being subjected to shifts cut-down or any other taunts or abuse. It also asked whether all types of workers' representatives, apart from trade union members and representatives in the field of safety and health, are protected against such acts. In the previous conclusions (Conclusions 2018), the Committee reserved its position on these points.

The report does not provide any answer in these respects and limits its submission to indicating that under Article 25 of the Law No. 6356 on Trade Unions and Collective Labour Agreements, the employer shall not discriminate between workers who are members of a trade union and those who are not, with respect to working conditions. However, albeit positive, this information is not sufficient for the Committee to conclude that the protection of workers' representatives from any forms of detrimental treatment short of dismissal is effective in the practice. Therefore, the Committee reiterates its previous questions, and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Facilities granted to workers' representatives

In the previous conclusions (Conclusions 2018), in the absence of any answer to its request (see Conclusions 2014) for detailed information on facilities afforded by the employer in order

to enable workers' representatives to carry out their functions efficiently and promptly, specifying that this information should cover means such as premises, materials, technical support or collection of financial contributions, the Committee concluded that it had not been established that the situation was in conformity with the Charter in this respect.

In reply, the report indicates that according to Article 27(3) of Law No. 6356, the duties of workers' representatives are defined as follows: – to hear workers' requests and handle their grievances; to maintain cooperation, harmony and 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. According to the report, under the provisions of Law No. 6356, employers shall provide trade union and workers' representatives with appropriate means and necessary facilities to carry out their duties in the workplace quickly and efficiently (Article 27 of Law No. 6356).

Concerning the public sector, in their comments concerning the 14th National Report on the implementation of the European Social Charter submitted by Türkiye, the Human Rights Association ("the İHD") states that according to Article 18 of Law No. 4688 on Public Employees and Trade Unions, trade union activities can be undertaken within work hours only with the permission of the employer. The İHD considers that the requirement of a "permission" by the employer in order for the workers' or trade union representatives to conduct activities within working hours, is an unjustified interference within the right to freedom of association.

The Committee considers that the information at its disposal is not sufficient to establish the conformity of the situation with the requirements of the Charter. It requests information on facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971, including access to premises, use of materials, distribution of information, support in terms of benefits, training costs (Statement of Interpretation, Conclusions 2016). The Committee also asks that that the next report comment on the İHD's submissions. In particular, the Committee requests that the next report provide information on facilities granted to workers' representatives in the public sector, under the provisions of Law No. 4688.

The Committee therefore reiterates its previous conclusion that facilities granted to workers' representatives are not adequate.

Covid-19

According to the report, in order to ensure that the Covid-19 pandemic is not used as an excuse for dismissal, temporary restriction on the termination of employment contracts by employers has been introduced for all the workers including trade union and worker's representatives in the Temporary Article 10 of Labour Law No. 4857.

Conclusion

The Committee concludes that the situation in Türkiye is not in conformity with Article 28 of the Charter on the ground that:

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

Article 29 - Right to information and consultation in procedures of collective redundancy

The Committee takes note of the information contained in the report submitted by Türkiye.

The Committee points out that no targeted questions were asked in relation to Article 29 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in Türkiye was in conformity with Article 29 of the Charter, without raising any question with respect to this provision.

The Committee notes from the report that no changes were made to the relevant regulation since the last report, and the information and consultation upon collective cancellation of employment contracts continue to be regulated by Article 29 of the Labour Code (No. 4857) described in detail in previous national reports. The report also indicates that during the Covid-19 pandemic, a temporary restriction on the termination of labour agreements was implemented as a part of the job-retention policy. Moreover, according to the report, in order to ensure the effective implementation of the provisions of the Labour Code with regard to collective dismissals, 70 inspections were carried out in 2020 and as a result of these inspections, administrative fines of a total of 281,564 Turkish Liras (approximately € 15,352.45) were imposed on 24 workplaces. In 2021, as a result of 507 inspections carried out within this scope, 281 workplaces were fined 2,299,905 Turkish Liras (approximately € 125,335.42) in total.

The Committee maintains its previous conclusion that the situation in Türkiye is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Türkiye is in conformity with Article 29 of the Charter.

Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, 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".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

l'Encadrement (CFE-CGC) v. France, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.