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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

TURKEY

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, is contained in the General Introduction to all Conclusions.

The following chapter concerns Turkey, which ratified the Revised European Social Charter on 27 June 2007. The deadline for submitting the 12th report was 31 December 2019 and Turkey submitted it on 6 July 2020.

The Committee recalls that Turkey was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, 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 all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

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 I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Turkey has accepted all provisions from the above-mentioned group.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Turkey concern 14 situations and are as follows:

– 1 conclusion of conformity: Article 10§1.

– 10 conclusions of non-conformity: Articles 1§2, 10§4, 10§5, 15§1, 15§2, 15§3, 18§3, 20, 24 and 25.

In respect of the other 3 situations related to Articles 1§1, 1§4 and 10§3, 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 Turkey under the Revised Charter.

The next report from Turkey will deal with the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),

- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, moving from 6.1% in 2015 to 3.3% in 2016, and then to 7.5% in 2017 and 3% in 2018.

The overall employment rate (persons aged 15 to 64 years) rose from 50.2% in 2015 to 52% in 2018.

The employment rate for men increased from 69.8% in 2015 to 70.9% in 2018, and the rate for women from 30.4% in 2015 to 32.9% in 2018. The employment rate for older workers (55 to 64-year-olds) increased from 31.8% in 2015 to 35.3% in 2018. Youth employment (15 to 24-year-olds) rose from 34.1% in 2015 to 35% in 2018.

The overall unemployment rate (persons aged 15 to 64 years) rose from 10.4% in 2015 to 11.1% in 2018.

The unemployment rate for men increased from 9.3% in 2015 to 9.7% in 2018, and the rate for women from 12.9% in 2015 to 14% in 2018. Youth unemployment (15 to 24-year-olds) increased from 18.5% in 2015 to 20.2% in 2018. Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) rose from 20.8% in 2015 to 22.2% in 2018.

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) rose from 23.9% in 2015 to 24.4% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that despite the positive GDP growth rate throughout the reference period, employment rose only slightly and unemployment increased. In particular, the employment rates for women and persons over the age of 55 remained low, and the proportion of young NEETs remained high. Furthermore, there is still a very big gap in the labour market between male and female employment rates (38 percentage points in 2018).

Employment policy

In its report, the Government mentions that Article 13 of Labour Act No. 4857 was amended in January 2016 to eliminate certain obstacles to work-life balance and avoid the departure of women from the labour market following maternity leave.

The Government further mentions that the National Employment Strategy 2014-2023 aims to resolve the structural problems affecting the labour market and contribute to the growth of employment in the medium and long term; this strategy is being implemented through three-year action plans. Furthermore, the tenth Development Plan (2014-2018) comprised 25 priority programmes, two of which (“Workforce Market Activation” and “Basic and Professional Skills Development”) were intended to activate the labour market, increase skilled and decent employment, reduce unemployment and increase productivity, and provide the required knowledge and skills.

The Committee takes note of the tasks and activities of the Employment Agency (advice for jobseekers, employers, educational and training institutions; directing jobseekers to the services provided by the Agency or relevant institutions or organisations; drawing up individual action plans; preparing labour market studies; etc.). It notes that in 2018, approximately 1.2 million people obtained a job through the Agency (out of a total of just over 3.5 million unemployed people).

The Committee also takes note of the employment programmes implemented by the Agency. In particular, two projects were launched in 2018 to boost women’s participation in the labour

market: “Childcare Support”, which offers a childcare allowance for children aged from two to five years to enable women to receive vocational training in the industrial and manufacturing sectors (455 women benefited between April 2018 and October 2019), and “Mothers at Work”, which offers financial support (a daily allowance and a childcare allowance) to enable mothers of children aged from 0 to 15 years to receive vocational training (19,975 women benefited between September 2018 and October 2019 [much of this period was outside the reference period]). In addition, a project aimed at young people enabled approximately 21,000 persons aged from 18 to 29 who held a college or university degree to gain work experience through on-the-job training programmes followed by subsidised temporary employment (“First Step to Work”, August 2018-July 2019 [half of this period was outside the reference period]). The Committee requests that the next report provide information on all employment measures and programmes implemented for young people, including NEETs, women and workers over the age of 55.

The Committee also requests that the next report provide information on labour market measures taken to support people living in geographical areas or within communities (e.g. the Roma community) with distinct levels of under-employment or unemployment.

The Committee points out that the Government has only provided information on a few employment programmes. It has not given full details of the active measures taken or the number of participants (broken down by type of measure and year). In addition, it has not indicated the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed), or public expenditure on active and passive labour market measures (as a percentage of GDP). The Committee recalls that in order to assess the effectiveness of employment policies, it requires information on the above indicators.

The Committee also recalls that labour market measures should be targeted, effective and regularly monitored. With this in mind, it takes note of the information provided by the Government in relation to the way in which the implementation of the National Employment Strategy and the Development Plan is being monitored (quarterly data capturing, half-yearly meetings, etc.). The Committee requests that the next report provide information on the results of assessments of the effectiveness of the labour market measures taken by the authorities.

Conclusion

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

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

In its previous conclusion (Conclusions 2016) the Committee concluded that the situation in Turkey was not in conformity with Article 1§2 of the Charter on the grounds that:

- there was insufficient protection against discrimination in employment, in particular on grounds of sexual orientation;
- the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from fully compensating the loss suffered and being sufficiently dissuasive;
- the restrictions on access of nationals of other States Parties to several categories of employment were excessive, which constituted a discrimination on grounds of nationality.

Turkey has accepted Article 15§2 and Article 20 of the Charter. Therefore, it was under no obligation to report on prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

As regards the legislation prohibiting discrimination in general terms, the Committee observed in its previous conclusion (Conclusions 2016) that there was no specific legislation for the prohibition of discrimination on grounds of sexual orientation, while also noting that discrimination against LGBT people in employment was widespread. It concluded, accordingly, that this situation was not in conformity with Article 1§2 of the Charter. As there has been no change to the legislative framework in this respect in the reference period, the Committee reiterates its conclusion of non-conformity.

Apart from general information on the legal framework prohibiting discrimination, the report does not reply to the Committee's request for information on any specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion. The report only replies to the Committee's query in the previous conclusion (see Conclusions 2016) as regards disciplinary actions and dismissals from the Armed Forced based on sexual orientation. It states that accepting sexual orientation as a reason for dismissal cannot be considered within the scope of "prohibition of all kinds of discrimination in employment" and that such dismissals are necessary for the protection of the military discipline and to ensure the orderly functioning of the public service. The Committee considers that such an explanation is not compliant with the prohibition of discrimination in employment enshrined in Article 1§2 of the Charter. Furthermore, no information is provided on the effective protection against discrimination on other grounds. In this regard, the Committee notes, in particular, severe concerns raised by various international bodies in relation to discrimination on grounds of political opinion during the state of emergency in the reference period. It refers, for example, to the report of the Office of the United Nations High Commissioner for Human Rights on the impact of the state of emergency

on human rights in Turkey, January – December 2017, which points to the arbitrary deprivation of the right to work of civil servants, teachers, judges and lawyers dismissed, often indiscriminately, and indicates clearly that the successive states of emergency declared in Turkey have been used to severely and unfairly curtail the human rights of a very large number of people The report does not either reply to the Committee's request in the previous conclusion on the prevention of discrimination on grounds of ethnic origin and race, and specifically on any measures or activities undertaken to address the situation of the Roma and Kurdish minorities, including awareness-raising campaigns, and on the impact of these measures on the inclusion of these minorities in the labour market (see Conclusions 2016). The Committee considers that the two examples of projects launched in the reference period: "Supporting the Employment of Roma Citizens" and "Project for Improving the Employability of Disadvantaged Persons", including persons with disabilities and Roma, to which the report refers, are not sufficient for a full assessment of the situation. The Committee renews it request for comprehensive information on how discrimination on the grounds listed above is prevented and combated. Meanwhile, it considers that it has not been established that there is sufficient protection against discrimination in employment, in particular on grounds of sexual orientation, ethnic origin and political opinion

As regards prohibition of discrimination on grounds of nationality, the Committee found previously that the situation was not in conformity with Article 1§2 of the Charter because nationals of other State Parties to the Charter were excluded from several categories of employment such as pharmacist, veterinarian, news-paper editor (Conclusions 2012 and 2016). The report indicates that there were no amendments to the occupational laws in the reference period and certain categories of occupations are still not accessible to foreign nationals. The Committee thus maintains its conclusion of non-conformity on this point.

Apart from questions on the legal framework, during this examination cycle the Committee assesses the specific measures taken to counteract discrimination in the employment of migrants and refugees. The report does not provide any information in this respect. The Committee notes in this regard that Amnesty International, in its 2017 report on asylum seekers and refugees in Turkey, observed that asylum-seekers and refugees in Turkey are denied access to means of subsistence sufficient to maintain an adequate standard of living and they do not have timely access to "durable solutions." Furthermore, the ILO in its 2020 report "Syrian Refugees in the Turkish Labour Market" pointed to the fact that refugees experience significant barriers in achieving self-reliance, and stressed the need to adopt relevant measures to improve the integration of refugees, such as providing formal work arrangements and necessary skills-building programmes, as well as removing mobility restrictions and relaxing the employment quota for those under a temporary protection regime. The Committee thus renews its request for information, which should include comments on these observations. Should the next report fail to provide it exhaustively, nothing will allow to show that the situation is in conformity with the Charter on this point.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination and able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment.

In its previous conclusion, with a view to assessing the effectiveness and accessibility of remedies for allegations of discrimination, the Committee asked for examples of complaints dealt with by the Labour Inspectorate and the courts. The report confirms that labour inspectors conduct inspections and may impose fines for violations of labour laws or bring action before the courts. It provides data for inspections carried out between 2015 and 2018, including inspections of pressure on trade union, violations concerning working hours or equal pay. The Committee understands from the report that 544 inspections carried out in the

reference period were related to discrimination and asks that the next report provide more exhaustive information on their nature and, in particular, on the grounds of discrimination detected. The report also provides examples of four Supreme Court cases concerning discrimination (based on trade union activities, gender, pregnancy, and on the payment of immigration benefits to the workers who come to Turkey to work, which cannot be considered discriminatory). The Committee considers that statistical data on discrimination cases are invaluable for assessing the effectiveness of the remedy; it finds the information provided insufficient in this respect. In particular, it does not specify what grounds of discrimination are detected, how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and are effectively enforced by labour inspectors, or whether victims of discrimination are awarded sufficient compensation. The Committee notes in this respect the concern raised by the European Equality Law Network's above-mentioned report, that sanctions are not explicitly mentioned in the laws with anti-discrimination provisions and where they are mentioned, they are not dissuasive, proportional and effective. It asks that the next report comment on this observation.

The Committee further observes that in its previous conclusion (Conclusions 2016) it concluded that the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from fully compensating the loss suffered and being sufficiently dissuasive. The report provides there is still an upper limit of eight months' wages for compensation awarded to victims of discrimination under the Labour Law. It states, however, that a victim of discrimination may also claim moral or material damages under the civil code procedure, where upper limits do not apply. The Committee considers that the limits, under the Labour Law procedure when applying to victims of discrimination in the workplace, still do not comply with Article 1§2 which requires that they be sufficiently dissuasive. It also notes an observation made by the European Committee against Racism and Intolerance in its 2019 conclusions on Turkey that there are no rules that would allow awarding compensation to victims of discrimination in proceedings before the HREI or the judiciary. It is asked that the next report comment on it. Overall, the Committee takes note that there has not been any change to the situation and it therefore maintains its conclusion of non-conformity on this point.

In its previous conclusion, the Committee also recalled that domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases and asked whether the law provided for it (Conclusions 2016). The report states that, under the Labour Law provision, the onus is on the employee to prove that the employer has violated the provisions on the principle of equal treatment. However, if the employee can show that such a violation did occur, the burden of proof that the alleged violation has not materialised shall rest on the employer. Further, the onus shall be on the employer to prove that the dismissal was based on a valid reason. However, the burden of proof shall be on the employee if he/she claims that the termination of his employment contract was based on a reason different from the one presented by the employer.

As regard an independent body to promote equal treatment, the Committee noted in its previous conclusion that in 2016 through the Law on Human Rights and Equality Institution, the Human Rights and Equality Institution has been established to carry out activities necessary for the fight against discrimination. It asked for information on its activities, mandate, as well as the election procedure of its members. In reply, the report describes the broad scope of the Institution's duties, namely: protect and promote human rights, prevent discrimination and remedy violations, raise public awareness of human rights and non-discrimination, contribute to the development and delivery of equality training programs, assess legislation on issues falling under its mandate, enquire into the violations of human rights, examine them, make a final decision and monitor the results – *ex officio*, fight against torture and mistreatment, take action to that end, act as the National Preventive Mechanism in this respect, regularly conduct inspections of places where those deprived of their liberties are held, enquire into the applications filed by persons deprived of liberty, examine them, make a final decision and monitor the results, and fulfil other tasks as well. The Board is the decision-

making body of the Institution. It consists of eleven members appointed by the President. The report provides two cases as examples of the enquiries and decisions made by the Institution regarding discrimination at work and where prohibition of discrimination was violated.

The Committee notes that the European Equality Law Network in its above-mentioned country report, as well as the European Commission against Racism and Intolerance (ECRI) in its 2019 Conclusions on Turkey, raise concerns that the equality body's independence has not been ensured. The ECRI also states that it has developed only very limited activity since the beginning of 2017.The Committee asks that the next report comment on these observations. It also requests comprehensive data on the number of cases of alleged discrimination dealt with by the Institution, their outcomes and the grounds of such discrimination. Further it asks what share of the Institution's budget is earmarked for activities relating to preventing and combating discrimination, in particular to dealing with relevant complaints.

Further, the Committee wishes to refer to the European Equality Law Network's report, mentioned above, in which it discerns several other shortcomings in the remedies available in discrimination cases, namely that the Turkish law does not explicitly recognise the legal standing of NGOs to bring claims in support of victims of discrimination, with the exception of trade unions and consumer protection associations, and that the mandates of the national and local human rights bodies and the Institution of the Ombudsman do not explicitly refer to protection from discrimination and offer limited possibilities for intervention and influence. It asks that the next report comment on these observations.

In the light of the information in its possession, the Committee considers that it cannot make a comprehensive assessment of all aspects pertinent to the existence and functioning of effective remedies in cases of alleged discrimination. It repeats its requests that all relevant data be included in the next report, together with exhaustive replies to all the queries made above. It considers that, should the requested information not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on this point.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC]*,* no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* § 123; *C.N. and V. v. France,* § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* par. 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition

of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery and servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the "gig economy" or "platform economy".

The Committee notes that the national authorities have not replied to the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The current report only addresses the questions raised in its previous conclusion (work of prisoners and other aspects of the right to earn one's living in an occupation freely entered upon, Conclusions 2016) and its previous findings of non-conformity (see below).

Criminalisation and effective prosecution

The Committee notes from the report that Article 117 of the Turkish Penal Code No. 5237 criminalises the violation of freedom of work and labour, which includes the act of employing helpless, homeless or dependent persons without payment or for substandard wages and the act of forcing them to work and live under inhumane conditions. The Committee also notes from GRETA's Report on Turkey of 2019 that Article 80 of the Penal Code criminalises trafficking in human beings and includes, among the forms of exploitation, forced labour or services, slavery or any similar practice (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, first evaluation round, GRETA (2019)11, 8 October 2019, para. 49). GRETA urged the Turkish authorities to add "servitude" to the list of forms of exploitation (para. 56). GRETA also found that there were difficulties in qualifying cases as trafficking in human beings for the purpose of labour exploitation as opposed to the offence covered by Article 117 (violation of freedom of work and labour).

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and*

Others, §116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee therefore asks that the next report provide detailed information on the application in practice of Articles 117 and 80 of the Penal Code in relation to forced labour and labour exploitation. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how these two provisions are interpreted and applied. The Committee also wishes to be informed on whether "servitude" has been added to the list of the forms of exploitation in the context of trafficking.

Prevention

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The current report provides no information on these points. The Committee notes however from the abovementioned GRETA Report that in 2017 the authorities had decided to draft the third National Action Plan on Combating Trafficking in Human Beings but in October 2018 (at the time of GRETA's visit to Turkey), no progress appeared to have been made in this respect (par. 22). The Committee requests that the next report provide information on whether this national action plan has been approved and if so, on its implementation and impact on the prevention of labour exploitation. In this regard, it notes that according to GRETA, greater attention and human resources needed to be devoted to preventing and combating trafficking in human beings for the purpose of labour exploitation in different sectors of the economy (para. 70). GRETA found that the number of victims of trafficking for the purpose of labour exploitation had been on the rise, accounting for 19% of all victims in 2014-2018 (para. 13).

With regard to labour inspection services, the Committee notes from the abovementioned GRETA Report that labour inspectors do not have a mandate to identify victims of trafficking and have to refer any possible cases to law enforcement agencies, which in turn should decide whether to contact the Directorate General of Migration Management (DGMM) to perform identification. Labour inspectors do not receive training on trafficking for the purpose of labour exploitation, with some exceptions; and no indicators are provided to them to identify trafficking for labour exploitation. In the area of agriculture, the mandate of labour inspectors is limited to farms employing over 50 workers (para. 148; see also United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, concluding observations, 2016, which referred to the fact that 98% of agricultural establishments fell outside the scope of the labour inspections). GRETA therefore urged the Turkish authorities to expand the capacity of labour inspectors so that they can be actively engaged in the prevention of trafficking, including in private households, small businesses in the hotel, catering and restaurant sectors and small agricultural units. It also urged them to monitor the frequency and effectiveness of labour inspections and ensure that sufficient human and financial resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk in the agricultural sector (para. 155).

The Committee further recalls that it has considered that, due to the low level of human resources in the inspectorate service responsible for monitoring compliance with occupational health and safety legislation, the labour inspection system could not be considered efficient with regard to Article 3§3 of the Charter (enforcement of safety and health regulations, see Conclusions 2017).

In the light of the above findings, the Committee asks that the next report provide detailed and up-to-date information on the mandate and capacity (i.e., resources and training) of labour inspectors to prevent and detect cases of labour exploitation, particularly in high-risk sectors such as agriculture, mining, construction, hospitality, entertainment and manufacturing. The report should also indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of the inspections carried out by the competent labour inspection services.

No information has been provided in the report on whether Turkish legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains. It requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

With regard specifically to the problem of child victims of trafficking, including for forced begging, the Committee refers to its Conclusions 2019 on Article 7§10, where it reserved its position on the conformity of the situation. It will address this situation in the framework of the next reporting cycle on Article 7§10.

Protection of victims and access to remedies, including compensation

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

No information is provided in the report on these points. The Committee notes however from the 2019 GRETA Report on Turkey that the Regulation on Combating Human Trafficking and the Protection of Victims, which lays down the rules and procedures concerning the identification of victims of THB, victim support programmes, voluntary and safe return programmes, and residency permits for foreign victims, came into force on 17 March 2016 (par. 18). The Committee requests that the next report provide information on the number of presumed and identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures provided under the abovementioned Regulation during the next reference period. It also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants), and on the duration of such assistance.

The Committee further asks for confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. It asks for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers

that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusions (Conclusions 2012, 2016), the Committee asked information on the legislation adopted to combat forced labour in the domestic environment and the measures taken to apply it, in the light of its Statement of Interpretation of Article 1§2 in the General Introduction to Conclusions 2012. The current report provides no information on this point.

The Committee notes from the abovementioned GRETA Report on Turkey that domestic work is outside the scope of labour inspectors' mandates and inspections do not take place in private households (para. 148). GRETA particularly urged the Turkish authorities to review the regulatory systems concerning migrants working as home care workers, and ensure that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of trafficking (para. 155). In the same vein, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in its concluding observations of 2016, recommended that Turkey strengthened labour inspection services to monitor the conditions of domestic work effectively and to receive, investigate and address complaints of alleged violations in that regard (particularly with regard to migrant domestic workers).

The Committee also recalls that it reserved its position on Article 3§2 of the Charter (safety and health regulations) on the ground that the Occupational Health and Safety Act No. 6331 did not apply to domestic services (Conclusions 2017).

The Committee therefore asks that the next report provide information on how domestic workers are protected from labour exploitation and abusive conditions, including on whether these workers have access to effective remedies to complain about exploitative conditions. The Committee considers that, should this information no bet provided in the next report, nothing will allow to establish that the situation is in conformity with the Charter on this point.

"Gig economy" or "platform economy" workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers from exploitation in the "gig economy" or "platform economy".

The Committee reiterates its request and asks for information in the next report on whether workers in the "platform economy" or "gig economy" are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

In its previous conclusion (Conclusions 2016), the Committee considered that the situation was not in conformity with Article 1§2 of on the ground that Martial Law No. 1402/1971 did not adequately protect civil servants and local government employees (in relation to the possibility of suspending or transferring them on the ground that their employment constituted a threat to security in general, to the law and to public order or safety, or because it was unnecessary; see also Conclusions XVI-1(2002), Conclusions XVII-1 (2004), Conclusions XVIII-1(2006), Conclusions XIX-1(2008), and Conclusions 2012). In this respect, the report states that this law was repealed on 25 July 2018 by Law No. 7145. The Committee understands that the provision concerned no longer applies. It nevertheless asks that the next report provide information on any other similar provisions concerning the transfer or suspension of civil

servants which may have been introduced and/or applied, particularly following the coup attempt of July 2016 and the declaration of the state of emergency, as well as the constitutional reforms of 2017 (see the 2017 Governmental Committee's report concerning conclusions 2016 of the European Social Charter, pp. 7-11, according to which the representative of Turkey confirmed that more than 100,000 civils servants had been dismissed further to the introduction of the state of emergency). In this regard, the Committee notes from other Council of Europe bodies that some of the measures adopted during the state of emergency concerned the suspension or dismissal of civil servants (see Commissioner for Human Rights of the Council of Europe, "Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey", 7 October 2016, par. 8; Parliamentary Assembly of the Council of Europe, Resolution 2156 (2017), The functioning of democratic institutions in Turkey).

In the meantime, pending receipt of the information requested, the Committee cannot conclude that the situation has been brought into conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 1§2 of the Charter on the grounds that:

- there is no specific legislation on the prohibition of discrimination on grounds of sexual orientation;
- it has not been established that there is sufficient protection against discrimination in employment, in particular on grounds of sexual orientation, ethnic origin and political opinion;
- the restrictions on access of nationals of other States Parties to several categories of employment are excessive which constitutes a discrimination on grounds of nationality;
- the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from fully compensating the loss suffered and from being sufficiently dissuasive;
- it has not been established that civil servants are sufficiently protected against arbitrary suspensions or transfers.

Article 1 - Right to work

Paragraph 3 - Free placement services

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

As Turkey has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures concerning vocational guidance (Article 9) (Conclusions 2016) as well as vocational training for persons with disabilities (Article 15§1) (Conclusions 2016).

The Committee however deferred its conclusion on continuing vocational training (Article 10§3) (Conclusions 2020). Accordingly, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 10 - Right to vocational training

Paragraph 1 - Technical and vocational training; access to higher technical and university education

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

The Committee refers to its previous conclusions for a description of the situation which it deemed to be in conformity with the Charter (see Conclusions 2016) and takes note of the information provided in response to its requests.

Measures taken to match the skills with the demands of the labour market

The Committee notes that, in 2016, the authorities reformed secondary vocational education and higher vocational and technical education. In particular, the changes harmonised secondary and higher education programmes with the relevant national professional standards. As part of its Strategic Plan (2015-2019), the Ministry of Education developed modular teaching programmes prepared and updated by commissions made up of representatives from the professional sector, relevant NGOs, university representatives, field experts and professional staff. The programmes are regularly adapted to the needs of vocational sectors.

In addition, secondary school graduates can now more easily follow university courses specific to their education and links between theoretical and practical learning have been put in place, in particular in industry (e.g. “Higher Education-to-Industry Qualified Labour Force Project”).

The Committee notes that an “Associate Vocational Schools Co-ordination Board” was established by law in vocational technical and higher education in order to enhance university-industry co-ordination. The Board issues opinions and suggestions regarding the determination of standards for opening vocational schools and programmes, developing and monitoring existing programmes, the employment of graduates and the completion of undergraduate degrees. A “Higher Education Programmes Advisory Board” has also been set up to provide opinions and suggestions on the processes regarding the establishment and development of employment-oriented policies in higher education.

The Committee takes note, from the information provided concerning Article 9, that the authorities plan on establishing an integrated structure for vocational and technical education as part of the “2023 Education Vision” programme. The Committee asks the authorities to provide in their next report information on the procedures put in place, their implementation and the results obtained.

The Committee notes that the "Uni-Veri" project shows the performance of the different university departments in Turkey on the basis of graduates’ employment rates within 12 months of graduation, but also the average initial wages of graduates, the relation between the education level and the profession and the employment rate in the public sector. The Committee notes that the authorities have taken into account the average employment rates of vocational education school graduates in the last few years to establish quotas in certain programmes according to the demands of the labour market.

In the information submitted regarding Article 1§4, the authorities indicate that the National Employment Strategy (2014-2023) implemented through three-yearly action plans comprises several programmes related to vocational training implemented by the Turkish Employment Agency (ISKUR). Several projects (e.g. “First Step to Work”) aim to improve youth employment rates on the labour market through training in the digital and technological fields (cybersecurity, coding and cloud computing).

Measures taken to integrate migrants and refugees

The information submitted with regard to Article 1§3 indicates that the legislative amendment of 6 May 2016 establishing a temporary employment relationship through private employment

agencies provides that applicants for and beneficiaries of international protection can receive vocational education as part of a service provided by the Turkish Employment Agency. They can also register as jobseekers. The Committee notes that an Employment Support for Syrians and Host Communities project implemented by the World Bank and launched in 2018 provided support for more than 11 000 people, among whom 1 500 attended Turkish classes.

The authorities moreover indicated as concerns Article 10§5, that Article 29 of the Ministry of Education Regulation on Secondary Education Institutions provides that student visas are not required of the children of foreigners whose country is not certain or who are asylum seekers/refugees or of the children of foreigners with a work and residence permit in Turkey. In that case, residence permits issued by law enforcement authorities, valid for at least six months, are deemed sufficient and the students are enrolled. In addition, foreign students coming from abroad are placed in schools or vocational education centres in line with the admission requirements of schools.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 10§1 of the Charter.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

In its previous conclusion (Conclusions 2016), the Committee deferred its conclusion.

The Committee notes that Turkey was asked to reply to the specific targeted questions for this provision (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

The Committee takes note from the report of the Vocational Training Courses and the Entrepreneurship Training Programme available to unemployed persons registered at the Turkish Employment Agency (ISKUR), as well as on-the-job training programmes providing professional experience.

In its previous conclusion (Conclusions 2016), the Committee requested information on the types of continuous vocational training and education available to employed persons, overall participation rate of persons in training, percentage of employees participating in vocational training and total expenditure. According to the report, vocational training courses of employees are organised on the basis of requests of employers or the labour market. The duration of training courses may last up to 160 days and may not exceed 8 hours per day and 40 hours per week. Successful participation leads to the award of a certificate. In addition, in the context of lifelong learning, Continuing Education Centres of universities offer education services in several fields. The Committee notes that according to the report that the total number of persons benefiting from vocational training courses was 13.592 in 2015, 10.394 in 2016, 12.997 in 2017 and it fell to 6.457 in 2018. However the Committee considers that this figure does not represent the total number of employed persons in vocational training. It recalls from the previous conclusion (Conclusions 2016), that, in 2014, the number of on-the-job training courses participants was 59.456. The Committee asks the next report to provide updated information on the overall participation rate of employed persons in training, percentage of employees participating in vocational training and expenditure.

The Committee also notes that the number of women participating in vocational training is significantly lower than that of men. It asks the next report to provide information on the measures taken to increase the participation of women in such courses.

In its previous conclusion (Conclusions 2016), the Committee asked the next report to provide figures on the total number of unemployed persons having participated in a training and in proportion to the total number of unemployed persons, as well as the percentage of those who found a job afterwards. The Committee notes from the report that, during the reference period, the number of persons benefiting from active workforce programmes increased from 370.385 in 2015 to 498.934 in 2018, peaking in 2017 with 508.851 participants. The Committee notes from the report that the rate of unemployed persons participating in vocational training courses as a proportion of the total number of unemployed was 3.2% in 2018. It also notes that out of 110.782 participants in vocational training courses in 2018, 39.645 were transferred into employment within a year following their training. It asks what measures does the government plan to take in order to increase the participation of unemployed persons in training and re-training programmes.

In relation to the targeted question addressed to Turkey with the letter of 27 May 2019, the report does not provide the requested information. The Committee, therefore, reiterates its question and asks the next report to provide information on strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The Committee notes that the present report was asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

The Committee previously concluded that the situation in Turkey was not in conformity with Article 10§4 of the Charter on the ground that it had not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusions 2016).

The Committee notes that, according to the ISKUR (Turkish Employment Agency), the number of long-term unemployed decreased significantly during the reference period: 982.588 persons in 2015, 725.497 persons in 2016, 562.708 persons in 2017 and 180.293 persons in 2018.

The report indicates that vocational training courses, on-the-job training programmes and public works programmes offered by ISKUR include the long-term unemployed. ISKUR also offers the Job Clubs service, an intensive career guidance and employment service that aims to provide job search methods and motivational support for groups that require special policies, such as the long-term unemployed.

However, the Committee did not find in the report the specific information requested on the types of training and retraining measures available, the number of persons undergoing such training and the number or rate of young long-term unemployed persons and their participation in special retraining and reintegration measures. No information is provided on the impact of the measures implemented on the reduction of long-term unemployment.

The Committee therefore requests that the next report provide information on the nature and extent of special retraining and reintegration measures taken to combat long-term unemployment among youth and others, as well as figures demonstrating the impact of such measures in reducing long-term unemployment. Meanwhile It reiterates its previous conclusion.

In its previous conclusion (Conclusions 2016), the Committee asked whether equal treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed to nationals of other States Parties lawfully resident in the national territory on the basis of the conditions mentioned under Article 10§1 of the Charter.

The report confirms that foreigners lawfully residing in Turkey as well as foreigners under temporary protection can benefit from the services offered by ISKUR on equal terms with Turkish citizens, provided that they are approved by the provincial directorate of migration and registered in ISKUR.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The previous conclusion was deferred (Conclusions 2016). The Committee asked how many students of vocational training received various types of assistance and what was the total cost. It also asked whether nationals of other States Parties lawfully resident or regularly working in Turkey are equally treated in terms of access to financial assistance and scholarships and education loans.

The report indicates that during the reference period 159,045 students have received assistance provided by the Ministry of Family and Social Policies such as educational assistance, training material assistance, conditional training assistance, lunch assistance, book assistance, free of charge accommodation, transportation and catering assistance. The total cost of these measures amounted to TL 87,367,115.39 (US$15,408,662.33).

As regards the equal treatment of nationals of other States Parties, the report refers to Article 29 of the Regulation of the Ministry of National Education on Secondary Education Institutions which specifies the conditions for the enrolment of foreign students. The report states that, at the request of parents, foreign students can benefit from education and training services available to Turkish citizens, without discrimination.

The Committee considers that the report does not answer its question on equal treatment of non-nationals with regard to access to financial assistance and student scholarships and loans. It therefore reiterates its question.

In its previous conclusion (Conclusions 2016) the Committee asked an updated information regarding training during working hours and monitoring of the efficiency of training.

The Committee recalls that the time spent on supplementary training at the request of the employer must be included in the normal working hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous training. The term “during working hours” means that the worker shall be currently under a working relationship with the employer requiring the training.

The Committee takes note of the information contained in the report on the modalities of vocational training, but it requests that the next report inform it whether the time spent on additional training at the request of the employer is included in normal working hours.

With regard to monitoring the effectiveness of training, the report states that the performance of the programmes is evaluated taking into account criteria such as the employment rate of graduates, the number of projects carried out to improve the sector, the satisfaction rate of the enterprises where the education is provided and, above all, studies aimed at increasing practical education and employment.

The Committee requests that the next report indicate whether employers’ and workers’ organisations are involved in the process of supervising vocational training programmes, in particular for young workers.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that equal treatment of nationals of other States Parties residing or working lawfully in Turkey is guaranteed as regards financial assistance for vocational education and training.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 1 - Vocational training for persons with disabilities

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

The Committee previously concluded that the situation in Turkey was not in conformity with Article 15§1 of the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream education was effectively guaranteed (Conclusions 2016).

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

Legal framework

According to the report Disability Law No.5378 (The Disability Act) was amended in 2014 in order to reflect the principles of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The Disability Act ensures equal rights for persons with disabilities in the areas of education and vocational training, specifically prohibiting discrimination on the ground of disability and providing for reasonable accommodation. It underlines that the right of education of persons with disabilities cannot be prevented for any reason and that children, youth and adults with disabilities shall be provided with education in equal terms with others (Article 15).

The report also states that the Basic Law on National Education (No. 1739) lays down the principle that educational institutions are open to everyone without discrimination. It provides for special measures to be taken in order to create equal opportunities for persons with special education needs (Art. 8).

The Special Education Regulation No.573 (1997) provides for special support measures for children with special educational needs (SEN). It provides inter alia that all children with SEN should be provided with special education services irrespective of the severity of their disabilities, children with SEN should receive individualized educational programs addressing their unique needs and should be educated in the least restrictive environment with their non-disabled peers.

A new regulation on special education was published in July 2018 and contains provisions on educational evaluation and diagnosis procedures, early childhood education, education of children who have more than one disability, education at home and hospitals, individualized education programs, mainstreaming and integration practices.

As regards the definition of disability according to the report, the Disability Act defines a person with a disability as follows:

"Disabled is the person who has difficulties in adapting to the social life and in meeting daily needs due to the loss of physical, mental, psychological, sensory and social capabilities at various levels by birth or by any reason thereafter and who therefore need protection, care, rehabilitation, consultancy and support services".

The report also refers to another definition which defines persons with disabilities as persons who have various levels of physical, intellectual, mental or sensory impairments which in interaction with attitudes and environmental conditions may hinder their full and effective participation in society on an equal basis with others (Article 4).

The Committee notes in this respect that in its Concluding Observations the UN Committee on the Rights of Persons with Disabilities (CRPD/C/TU/CO/1, 1 October 2019)(outside the reference period)) expressed concerned about the prevalence, in practice, of the medical, charitable and paternalistic approaches to disability, exemplified by disability assessments on the basis of medical reports.

The Committee asks for the Government's comments on this.

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination "on the basis of disability" may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability the so-called "attitudinally disabled'").

The Committee therefore asks the next report to clarify whether the assessment of disability in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of "reasonable accommodation".

Access to education

The Committee previously concluded that the situation in Turkey was not in conformity with Article 15§1 of the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream education was effectively guaranteed (Conclusions 2016).

The report states that children with SEN receive education in mainstream/inclusive classes together with their peers without disabilities, in special education classes, in special education schools for different types of disabilities or in private special education schools or special education and rehabilitation centres.

The Committee notes the detailed statistics provided in the report. However it finds it difficult to interpret and draw conclusions from the data and finds the data somewhat contradictory.

The report suggests that 70% of children with SEN attend mainstream schools, some on a part time basis and receive support from rehabilitation services.

However according to the data in the report in the 2017/2018 academic year there were 398,815 children with SEN in education; 53,814 were in special educational schools, 49,304 in special classes and 295,697 in mainstream education. In addition there were 415, 785 children in special education and rehabilitation centres.

The Committee seeks confirmation that its interpretation of the data is correct. It notes the that the majority of children receive education in segregated settings. It wishes to receive further information on the role of special education and rehabilitation centres.

According to the Academic Network of European Disability Experts (ANED) in the 2018-2019 academic year, 52,852 students were enrolled in special education schools for children with disabilities. Further there were 2,437 private sector-run special education and rehabilitation centres operating in Turkey. For the year of 2016-2017, the number of children enrolled in these centres was 403,104. In addition (according to statistics of the Ministry of Education) for the 2018-2019 academic year, 268,977 students with disabilities were enrolled in mainstream schools.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/TU/CO/1, 1 October 2019)(outside the reference period) that the UN Committee expressed concern about the persistence of segregated education, and about the absence of an inclusive education system, reasonable accommodations and support, at all levels of education, despite the improvements to the physical accessibility of schools. It also expressed concern about the lack of systematic data on children with disabilities receiving individualized support in mainstream schools.

The Committee asks for the Government's comments on this.

In light of the information provided the Committee concludes that that the situation in Turkey is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of children with disabilities to mainstream education is effectively guaranteed.

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

According to the report children with disabilities/SEN are entitled to free transport to public institutions of special education, free lunches, education materials and course books in accessible formats. The Committee asks whether children with SEN are entitled to any other financial support to cover any additional costs that arise to ensure the removal of obstacles to their inclusion in education.

Measures aimed at promoting inclusion and ensuring quality education

The report mentions a national strategy and action plan on the rights of persons with disabilities. Further the 11th National Development Plan 2019-2023 sets out measures to increase the provision of services for children with disabilities/SEN.

The Committee asks for further information on these as they concern the promotion of inclusive education.

The report states that there are 228 regional and guidance centres across Turkey responsible for the diagnosis of SEN and the placement of children in education institutions.

Rehabilitation centres are responsible for supporting children with SEN in mainstream schools. These are privately funded institutions but are subsidized by the state.

A new Special Education Teacher Program was developed in 2016/2017 unifying the previous 4 programmes taught at university level.

In addition to train general education teachers in special education regional Guidance and Research Centres provide one-week courses for all elementary school teachers who will have students with SENs in their classrooms.

Further the report states that about half of the schools in the country, have entrance ramps, while all special needs educational institutions have ramps, elevators and special needs toilets. Turkey has developed an action plan to retrofit all the schools and make them accessible over the next three years and has allocated 3 billion Turkish Liras (USD 529100529) for the purpose. All new constructions, including schools, had to comply with all accessibility standards.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that “integration” and “inclusion” are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child’s right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that “inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion”.

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload. Alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there

is an individualized assessment of 'reasonable accommodation' to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market**.**

Remedies

The Committee previously asked for information on the measures taken to ensure effective remedies in cases of alleged discrimination in education and training on the ground of disability (including examples of relevant case law and its follow up) (Conclusions 2016).

The report states that a national human rights institution, the Human Rights and Equality Institution of Turkey (TIHEK), has been set up in 2016. It is in charge of monitoring public institutions. It has the competence to receive complaints of discrimination, including on the grounds of disability, and to issue recommendations to the parties concerned. Everyone has the right to address the Office. Further it works with representative organizations of persons with disabilities to enable children with disabilities to directly address the Institution.

The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of children with disabilities to mainstream education is effectively guaranteed.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 2 - Employment of persons with disabilities

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

The Committee notes that the present report was asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

The Committee previously concluded that the situation was not in conformity with Article 15§2 of the Charter on the grounds that it has not been established that effective protection of persons with disabilities against discrimination in employment was guaranteed and it had not been established that the reasonable accommodation obligation was guaranteed (Conclusions 2016).

Legal framework

The Committee refers to its previous conclusion (Conclusions 2016) for a description of the relevant legal framework with regard to disability and non-discrimination, in particular The Turkish Disability Act No.5378 (The Disability Act) as amended in in 2014 which prohibits discrimination on grounds of disability in employment and imposes the obligation of reasonable accommodation.

The Committee notes that the Labour Code was amended to explicitly include disabilities as a prohibited ground of discrimination.

Access of persons with disabilities to employment

The Committee notes that according to the report that the labour force participation rate for persons with disabilities was 22.1% compared to 52.1% for the general population. It further notes that 210,000 persons with disabilities were employed in the public sector. The Committee considers that the information provided is insufficient to assess the situation. The Committee therefore asks that the next report provide up-to-date figures relating to the reference period, on the total number of persons with disabilities of working age, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed.

Measures to promote and support the employment of persons with disabilities

The Committee previously noted a range of measures in place to encourage and support the employment of persons with disabilities; such as counselling, wage subsidies, and tax incentives training, assistance to begin an independent activity or to start-up a business, special competitions for the civil service, support for sheltered workshops etc.

The Committee further recalls that the reserved quota system requires all public authorities with at least 50 employees to employ a minimum share of 4% of persons with disabilities and 3% in the private sector. Those who do not comply with the obligation are required to pay a fine equivalent to two monthly minimum wages per worker. The Committee notes the information provided in the report on the compliance with the quota requirement. In the private sector, the quota gap was around 25,000 (101, 377 employed out of 126,238 expected).

However the Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/TUR/CO/1, 2019) that the UN Committee was concerned about the low level of compliance with the employment quota for persons with disabilities in the public sector, and with employment quotas for persons with disabilities in the private sector.

The Committee asks for the Government’s comments on this.

The Committee previously concluded that it had not been established that the reasonable accommodation obligation was effectively guaranteed. It asked for the next report to provide information on how the legal obligation to ensure reasonable accommodation, i.e. to adjust the workplace to the needs of people with disabilities, is implemented in practice, to provide any relevant data on compliance and relevant examples, and indicate whether it has prompted an increase in employment of persons with disabilities in the open labour market (Conclusions 2016).

The report provides very general information on the obligation on employers to make reasonable accommodation but provides no concrete information how it is implemented in practice, for example the number of requests for reasonable accommodation measures, the number of requested granted and the costs refunded. Therefore, the Committee reiterates its previous conclusion.

Howeve, the Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/TUR/CO/1, 2019) that the UN Committee was concerned about promoting sheltered workplaces for persons with disabilities, which affect persons with intellectual or psychosocial disabilities in particular, rather than creating opportunities for their employment in the open labour market and insufficient information about the provision of individualized support and accommodation in all sectors of employment, and insufficient information about effective remedies in cases of denial of reasonable accommodation.

The Committee asks for the Government's comments on this.

The report refers to the 11 National Development Plan 2019-2023 (outside the reference period) which seeks to increase the employment of persons with disabilities. The Committee asks for information on the results of the plan in the next report.

Remedies

The Committee previously concluded that it has not been established that effective protection of persons with disabilities against discrimination in employment was guaranteed. It asked for more information on the judicial and non-judicial remedies provided for in the event of discrimination on the ground of disability and on relevant case-law (Conclusions 2016).

The reports states that cases of alleged discrimination may be brought before the court. Legal aid is available subject to certain criteria. In addition, if the alleged discriminator was a public body a complainant may file a complaint with the Human Rights and the Equality Institution established in 2016 and which seeks to protect and improve human rights, ensure the right to equal treatment and prevent discrimination.

Further the Penal Code penalises disability-based discrimination.

The Committee takes note of the information and requests the next report to provide information on any relevant case law. Meanwhile it reserves its position on this point.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/TU/CO/1, 2019) that the UN Committee was concerned about the lack of information available about effective redress, including compensation and reparation in cases of disability-based discrimination. It asks for the Government's comments on this.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that the obligation to provide reasonable accommodation is guaranteed.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 3 - Integration and participation of persons with disabilities in the life of the community

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

The Committee previously concluded that the situation in Turkey was not in conformity with Article 15§3 of the Charter on the ground that it has not been established that anti-discrimination legislation covers the fields of housing, transport, communications and culture and leisure activities (Conclusions 2016).

Relevant legal framework and remedies

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades, away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

In response to the previous conclusion of non-conformity (see above) the report simply states that legislation provides effective remedies against discrimination in the fields covered by Article 15§3. The Committee asks the next report to provide full information on the provisions of the Turkish Disability Act on the prohibition of discrimination as well as on any other legislation prohibiting disability based discrimination in areas covered by Article 15§3. Meanwhile it reiterates its previous conclusion.

The Committee notes from the report that a new national Human Rights Institution was established in 2016, the Human Rights and Equality Institution of Turkey (TIHEK). It is responsible for monitoring public institutions. It has the competence to receive complaints of discrimination, including on the grounds of disability, and to issue recommendations to the parties concerned. The Committee asks the next report to provide information on any cases of discrimination on grounds of disability dealt with by the Institution.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/TU/CO/1 2019) (outside the reference period) that the Committee was concerned about the absence of effective (recorded) sanctions in legislation in cases of denial of reasonable accommodation and the lack of information available about effective redress, including compensation and reparation in cases of disability-based discrimination.

The Committee asks for the Government's comments on this.

The Committee also asks the next report to provide updated information on remedies for persons with disabilities.

Consultation

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide updated information on consultation

with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

Measures to ensure the right of persons with disabilities to live independently in the community

Financial and personal assistance

According to the report, services for persons with disabilities include residential care disabled living centres, rehabilitation centres, Hope Houses and day care services.

The Committee notes that while the number of day care service increased during the reference period so did the number of residential facilities.

Home-based care is under development, as part of the project to establish community-based living.

There are 99 community service centres offering services free of charge.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/TU/CO/1 2019) (outside the reference period) was concerned about the absence of a legislative framework in which the right of persons with disabilities to live independently and choose their place of residence is recognized. Further the UN Committee was concerned about the absence of measures aimed at obtaining personal assistance.

The Committee asks for the Government's comments on this.

The Committee asks the next report to provide information on personal assistance schemes; the legal framework, the implementation of the schemes, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

Technical aids

The Committee asks the next report to provide updated information on the provision of technical aids.

Housing

The Committee previously asked for information on the progress made in promoting accessible housing (Conclusions 2016). The report states that people with disabilities can request the adaption of their home in order to make it accessible. The Committee asks for further information on the scheme.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/TU/CO/1 2019) (outside the reference period) the prevalence of the institutionalisation of persons with disabilities on the basis of an impairment, in facilities such as “hope homes”, including children with disabilities, who remain in residential nursery schools and orphanages and the lack of measures to ensure access to housing in the community.

The Committee asks for the Government’s comments on this.

The Committee asks the next report to provide information on the progress made to phase out institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in residential institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence accessible sheltered of housing.

The Committee asks how many persons with disabilities live independently with support and how many live institutions and small group homes.

Mobility and transport

As regards access to public transport the report states that a new regulation on the rights of passengers travelling by railway entered into force in 2019 (outside the reference period), it inter alia seeks to make the service more accessible for persons with disabilities.

The Committee notes the information provided on the accessibility of airport and train stations as well as the duties of private transport providers.

Persons who need a specially adapted car are exempt from paying the consumption tax when purchasing such a vehicle, they are also exempt from motor vehicle tax. There are designated reserved parking spaces for persons with disabilities.

The Committee asks the next report to provide updated information on the accessibility of the public transport system.

The Committee previously took note of the relevant legislation concerning the accessibility of the built environment (Conclusions 2016). According to the report, the Regulation on Monitoring and Auditing Accessibility was revised in 2017. An administrative fine may be imposed on those who do not meet accessibility requirements.

The Committee asks the next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed in the event of a failure to respect the rules regarding the accessibility of buildings (including the nature of sanctions and the number imposed). It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules.

Communication

The Committee takes note of the information on the measures taken to make E government services accessible for persons with hearing impairments.

The Committee asks the next report to provide updated information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

Culture and leisure

The Committee takes note of the information of the new regulations on ensuring the accessibility of sports and on the measures taken during the reference period to enable persons with disabilities to participate in sporting activities.

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities especially for those in rural areas.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 15§3 of the Charter on the grounds that it has not been established that anti-discrimination legislation covers the fields of housing, transport, communications and culture and leisure activities.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 1 - Applying existing regulations in a spirit of liberality

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 3 - Liberalising regulations

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Access to the national labour market/Exercise of the right of employment

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Turkey was not in conformity with Article 18§3 of the Charter on the ground that the regulations governing access to self-employment of foreign workers had not been liberalised (the 5-year residence requirement for persons wishing to engage in a self-employed activity where they must demonstrate the creation of 10 new jobs on the Turkish market). It asked for information on the various temporary or long-term visas and residence permits available to nationals of States Parties to the Charter who wished to work in Turkey.

The report states that the rules and principles governing foreigners' access to the Turkish labour market are set out in the new International Labour Force Law No. 6735, promulgated on 28 July 2016 and published in the Official Gazette on 13 August 2016. The Directorate General of International Labour Force under the supervision of the Ministry of Family, Labour and Social Services is tasked with assessing applications for the granting, extension, restriction and withdrawal of work permits and also with issuing them.

The Committee notes from the report that, under Law No. 6735, various types of work permit are available:

- (1) Fixed-term work permit: this type of permit is valid for a maximum of one year and is issued the first time the foreign national makes an application, provided that the period in question does not exceed the duration of the labour or service contract. It allows the holder to be employed in a particular job, in a particular place and by a particular employer for a specific length of time. After a year, the work permit may be extended by two years to allow the holder to continue working in the same post and for the same employer. At the end of the two-year extension, the work permit may be extended by a further three years, to enable the holder to remain in the same post and with the same employer.
- 2) Indefinite-term work permit: foreigners who hold a long-term residence permit or who have held a valid work permit for at least eight years can apply for this permit.
- 3) Self-employment work permit: permits of this type may be granted to entrepreneurs wishing to set up their own businesses in Turkey provided that they have been lawfully and continuously present in the country for at least five years. When assessing an application for a permit of this type, moreover, the authorities consider the following factors: education, professional experience, contribution to science and technology, the impact of the person's activity or investment on the Turkish economy, the amount of equity held by the person if they are a partner in the business, etc. Self-employment work permits are issued for a fixed period of time. The Committee notes from the report that foreign nationals who wish to work on a self-employed basis but do not meet the requirements for a self-employment work permit can apply for a temporary work permit from the Ministry of Family, Labour and Social Services. The Committee observes that the new legislation has eased the restrictions applicable to foreign self-employed workers only slightly: the 5-year residence requirement for persons wishing to become self-employed still applies although there is no longer any mention of the requirement to show that ten new jobs have been created on the Turkish market. The Committee asks that

the next report detail all the conditions for obtaining a work permit for self-employment. In the meantime, it notes that Turkey has not really liberalised its regulations governing foreign workers' access to self-employment and therefore considers that the situation remains in breach of the Charter.

- 4) Work permit exemption (Article 16): the requirement to obtain a work permit can be waived in the case of highly skilled foreign nationals, investors, EU nationals, etc.
- 5) Turquoise Card: approved by the Turkish government on 28 July 2016, this card confers the right to permanent residence and the right to work in Turkey on highly skilled foreign nationals, based on their level of education, professional experience, contribution to science and technology and the economic impact of their activities and investment in Turkey.

The Committee previously noted (Conclusions 2016) that according to Article 27 of the Foreigners and International Protection Law No. 6458 of 4 April 2013, "A valid work permit as well as Work Permit Exemption Confirmation Document issued pursuant to Article 10 of the Law on Work Permits of Foreigners, shall be considered a residence permit".

The Committee notes that, according to the statistics presented in the report, the number of work permit applications submitted by nationals of States Parties to the Charter significantly increased (from 11,221 in 2016 to 32,547 in 2018), while the permit refusal rate remained stable (at around 13%). The Committee asks that the next report provide information on the reasons for refusal, for both first-time and renewal applications.

With regard to the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating access to the national labour market, the Committee notes that the Vocational Qualifications Authority is responsible for the recognition of degrees that are awarded by foreign education institutions and for vetting the professional qualifications of foreigners wishing to work in Turkey.

Consequences of the loss of employment

In its previous conclusion (Conclusions 2016), the Committee noted that it was not possible to provide a time extension to the residence permit to allow unemployed foreigners to seek another job and therefore concluded that the situation was not in conformity with Article 18§3 of the Charter on the ground that loss of employment led to the cancellation of the residence permit.

The report once again states that the work permit is deemed to be a residence permit. If the employment contract is not extended or terminated, the authorisation to remain in the country is deemed to have ended with the termination of the work permit.

According to the report, however, persons in that position can immediately apply, within 10 days, to the Ministry of Internal Affairs for one of the residence permits listed in the Foreigners and International Protection Law No. 6458 of 4 April 2013. Article 30 (1) lists the different types of residence permits: short-term residence permit, family residence permit, student residence permit, long-term residence permit, humanitarian residence permit, victim of human trafficking residence permit. Article 31(1) states that short-term residence permits can be granted to a foreigner who: arrives to conduct scientific research; owns immovable property in Turkey; establishes business or commercial connections; participates in on-the-job training programmes; arrives to attend educational or similar programmes as part of student exchange programmes or agreements to which Turkey is a party; wishes to stay for tourism purposes; intends to receive medical treatment, provided that he or she does not have a disease posing a public health threat; is required to stay in Turkey pursuant to a request or a decision of judicial or administrative authorities; changes his or her status after holding a family residence permit; attends a Turkish language course; attends an education programme, research, internship or, a course via a public agency; applies within six months following graduation from a higher education programme in Turkey.

In the light of the above with regard to foreign nationals who have lost their jobs and, consequently, their work and residence permits, the Committee notes that the information provided in the report does not enable it to establish that a foreign national in such a situation has a real possibility of applying for a residence permit for the purpose of seeking gainful occupation, in accordance with the above-mentioned Articles 30 and 31. It asks that the next report contain clarification on this point.

The report states that if the foreigner in question applies on-line through the e-residence system and goes to the Provincial Directorate of Migration Management on the day and time of the appointment with the documents requested, he or she will be issued with a receipt confirming the application and entitling the person to remain legally in Turkey until the application is assessed.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the ground that regulations governing access to self-employment of foreign workers have not been liberalised.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 4 - Right of nationals to leave the country

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

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

Legal framework

The report points out that Article 5 of the Labour Code (Law No. 4857) prohibits all discrimination between the sexes. It also guarantees the right to equal pay for equal work or work of equal value.

In response to the Committee's question (Conclusions 2016), the report states that Article 5 of the Labour Code prohibits direct and indirect discrimination. However, it does not contain definitions of direct or indirect discrimination.

The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the Additional Protocol of 1988), the concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment (University Women of Europe (UWE) v. France, Complaint No. 130/2016, Decision on the merits adopted on 5 December 2019, §163). The Committee therefore asks for information on this subject in the next report.

The report also states that Law No. 6701 of 6 April 2016 on the Human Rights and Equality Institution prohibits discrimination on grounds including gender.

The Committee found previously (Conclusions 2016 and 2012) that the situation was not in conformity with Article 20 of the Charter on the ground that not all professions were open to women, which constitutes gender discrimination. The report states again that administrative posts, trainee posts and posts which do not require physical effort are excluded; mining engineers have been working in mines. The report also refers to the ILO conventions on this subject. The Committee points out in this respect that its task is not to judge the conformity of a situation with other international instruments, but to assess whether the situation in Turkey is in conformity with Article 20 of the Charter. The Committee notes that the prohibition which it found not to be in conformity with the Charter still applies. It therefore upholds its conclusion of non-conformity on this point.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of

the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The report contains no information on this issue. The Committee asks for the next report to provide details about remedies available to victims of gender pay discrimination in employment.

In its previous conclusion (Conclusions 2016), the Committee noted that the *compensation* awarded to discrimination victims was subject to an upper limit of eight months' wages and found therefore that the situation was not in conformity with the Charter. The Committee notes that the arguments given in the report match those made in the context of the examination of Article 4§3 (Conclusions 2018) and hence it refers to its reasoning concerning this point in its previous conclusion under Article 4§3.It asks for information in the next report on disputes concerning gender pay discrimination settled by the courts and amounts of compensation awarded for pecuniary and non-pecuniary damage. 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 Turkey is in conformity with Article 20 of the Charter in this respect. The Committee also asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay.

With regard to the *burden of proof*, the report states that Article 5 of the Labour Code contains a special rule on the burden of proof in cases of gender-based discrimination. Under this article, the burden of proof of a breach on grounds of gender of non-discrimination rules relating to the negotiation, conditions, execution and termination by the employer of an employment contract lies with the employee. However, if there is a high probability that such a breach has occurred, it is then for the employer to prove that the alleged infringement has not occurred. Under 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.

The Committee asks for information in the next report on the rules that apply in the event of dismissal in retaliation for a complaint about equal wages.

As to the *penalties imposed* for breaches of the principle of non-discrimination, the report states that under Article 25 of the Law on the Human Rights and Equality Institution, an administrative fine of between TL 1,000 (€126) and TL 15,000 (€1 895) may be imposed on an employer (any public body or state institution, professional organisation with the status of a state institution, private individual or private undertaking). The amount of the fine depends on the seriousness and the consequences of the offence, the financial circumstances of the perpetrator and the aggravating effects of any multiple discrimination. If the discriminatory conduct is repeated, the fine will be increased by 50%. The Committee asks for confirmation in the next report that such fines are also imposed on employers if they have infringed the provisions on equal pay for women and men for work of equal value.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The report does not contain any information on *pay transparency* on the labour market. However, the Committee notes from the national report on gender equality in Turkey drawn up by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2019), that wage transparency measures are not applied in Turkey. According to the same source, payments to employees and civil servants are confidential.

As to the *parameters for establishing the equal value of the work performed,* the report states 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. The report also states that the Supreme Court has interpreted the principle of equal pay for equal work to mean that all employees who do the same work and have the same level of experience in the same workplace will be paid the same wage. In the decisions in question, it was stressed that experience should be determined not only according to length of service in the workplace but also factors such as the employees' technical know-how, the posts on which they were employed previously and any awards granted to them and penalties imposed on them at work.

The Committee also notes from the aforementioned report on gender equality (2019) 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 to the public sector, the Committee notes from this report that under the legislation on the right to information, a public official may obtain information on the wages of a colleague in a comparable situation. The Committee asks 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.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit.*). In this respect, the Committee refers to its previous conclusion under Article 4§3 (Conclusions 2018), in which it noted that under Article 12 of the Labour Code, a comparable employee was one under an indefinite-term contract performing the same or a similar job within the establishment. Where there is no such employee within the establishment, an employee under an indefinite-term contract performing the same or a similar job within a comparable establishment falling into the same branch of activity would be considered a comparable employee.

The report states that the provisions of collective agreements are defined in Turkish legislation as an exception to the principle of equal pay for equal work or work of equal value. By way of an example, the report states that under Article 25(2) of Law No. 6356 on Trade Unions and Collective Labour Agreements (prohibition of discrimination on grounds of membership of a trade union), "provisions of the collective labour agreement with respect to wages, bonuses, premiums and money-related social benefits" are excluded from the scope of the prohibition of discrimination. Once a collective bargaining agreement has been reached, as a general rule, only union members can benefit from its privileges and provisions. The Committee asks for more information on this subject in the next report. It asks in particular whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

Enforcement

As to supervision of the implementation of the legislation, the report states that the Labour Inspectorate monitors the application of the principle of non-discrimination in the labour and employment field, particularly the application of the Labour Code and equal pay rules. Following inspections by the Directorate of Guidance and Inspection in 2017 and 2018, administrative fines totalling TL 59 884 (€7 563) were imposed on 23 employers in all for breaches of the principle of equal treatment.

The Committee takes note of the establishment of the Human Rights and Equality Institution of Turkey (TIHEK) in 2016. Its functions are to protect and improve human rights, secure the right to equal treatment and prevent discrimination. It is tasked with examining complaints of discrimination and guiding victims in administrative or judicial procedures.

The Committee requests that the next report provide further information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The Committee takes note of the National Employment Strategy (2014-2023), under which measures are implemented to prevent discrimination on the labour market and enhance gender equality.

The Committee notes from the information on the active population provided by the Turkish Statistical Institute to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR; see its observations, published in 2020 (109th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration,

1951) that the employment rate of women over the age of 15 was 29.1% in 2018 and 28.8% in 2019 (compared to 65.5% and 62.4% for men, respectively).

According to the report, women earn less than men regardless of their level of education. On average, the pay gap was 7.7% in 2018. However, according to the report, the gender pay gap was 14.3% for persons with a secondary school leaving certificate and 28.8% for those who had successfully completed a vocational secondary school education.

In the light of the above, the Committee notes that the employment rate of women is still especially low, and there is still a pay gap between men and women. The Committee accordingly considers that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

The Committee asks for updated information in the next report on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. It also asks for information on the employment and unemployment rates for both men and women and the gender wage gap for each year in the reference period.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 20 of the Charter on the grounds that:

- women are not permitted to work in all professions, which constitutes discrimination based on sex;
- the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as "false self-employed workers" in the "gig economy" or "platform" economy. The Committee notes that the report does not provide information in this respect. It asks what safeguards exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

The Committee asks for updated information concerning the categories of persons that are excluded from protection against dismissal (i.e. workers on probationary period).

Obligation to provide valid reasons for termination of employment

The Committee notes from the report that, with Article 5 titled of Labour Courts Law No. 7036 dated 12/10/2017, labour courts were recognised as specialised courts assigned to hear and resolve all disputes between the workers and the employers. This change is intended to expediate decision making in case of disputes arising from the labour relationship between the employer and the worker.

The Committee asks the next report to provide updated information regarding the valid reasons for termination of employment established by the legislation.

Prohibited dismissals

The Committee recalls that, under Article 24 of the Charter, dismissal on the ground of temporary absence from work due to illness or injury must be prohibited. A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

Remedies and sanctions

In its previous conclusion (Conclusions 2012), the Committee considered that the situation was not in conformity with the Charter, as the maximum amount of compensation in case of unlawful dismissal is inadequate. More specifically, the Committee noted that, according to Article 21 of the Labour Law, if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him/her in work, compensation should be paid in the amount not less than the employee's four months' wages and not more than his/her eight months' wages.

The Committee notes from the report that Article 20 of the Labour Law No. 4857 was amended in 2017 and provides that the worker whose employment contract is terminated, is required to

apply to the mediator pursuant to the provisions of Labour Courts Law with the claim of reinstatement, within one month following the date of notification of the termination, asserting that no reason was shown in the notice of termination or that the reason shown was not a valid reason. In case that no agreement is reached as a result of mediation activity, a lawsuit could be opened before the labour court within two weeks following the date of issuance of the final minutes. If the parties agree, the dispute could be referred to a special adjudicator rather than the labour court. The burden of proof that the termination is based on a valid reason is to be borne by the employer.

The Committee observes that, according to Article 21 (Consequences of termination for invalid reasons) of Labour Law No. 4857, when it is ruled that the termination is invalid after being determined by the court or a special judge that the employer failed to demonstrate a valid reason or that the reason is invalid, the employer is obliged to reinstate the worker within one month. In case it fails to reinstate the worker to his/her position upon his/her demand within one month, it shall be obliged to pay a compensation that is equal to minimum four-months' and maximum eight-months' salary of the worker. The Committee understands that, in both cases, the worker receives a compensation amounting to four months of wages for the financial losses incurred. In addition, in case the worker is not reinstated, he/she also receives a compensation (between four and eight months of wages).

The Committee recalls that, under the Charter, workers dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered to comply with the Charter when they provide for:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement of the worker; and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; Conclusions 2016, Bulgaria).

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee considers that the legislation sets a ceiling to the maximum compensation that a worker may receive in case he/she is not reinstated. There is no information about non-pecuniary damage that can be sought through other legal avenues. Therefore, the Committee considers that the amount of compensation is not adequate nor dissuasive.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 24 of the Charter on the ground that the amount of compensation that a worker can receive in case of unlawful dismissal is not adequate.

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

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

In its previous conclusions (Conclusions 2016), the Committee concluded that the situation was not in conformity with Article 25 of the Charter on the ground that Turkish legislation did not cover paid leave owed as a result of work performed in the year during which insolvency or termination of employment occurred or take into account the amounts due in respect of other types of paid absence relating to a specific period.

Regarding the grounds for non-conformity, the Committee notes from the report that under Article 1 entitled "Insolvency of the Employer" of Law No. 4447 on Unemployment Insurance, a Wage Guarantee Fund must be put in place within the Unemployment Insurance Fund to pay the wages for the last three months of employment, if an employer is no longer able to pay the wages owed to their employees. With regard to the payments to be made in connection with this Article, the report indicates that the payments made depend on the basic wage, as long as the employee worked in the same workplace during the year preceding the employer's insolvency. According to Article 4 (entitled "Definitions") of the Regulations on the Wage Guarantee Fund, basic wage is defined as "an employee's net wage calculated on the basis of earnings subject to an insurance premium (as stated in Article 80§1(a) of Law No. 5510 of 31 May 2006 on Social Insurance and General Health Insurance)". The amount of the payments made by the Wage Guarantee Fund is determined on the basis of the premiums notified to the Social Security Institution for unpaid wages for the months concerned. When the wages for paid leave are not paid and the insurance premiums for the wages are not declared, no payments will be made. In the light of the above, the Committee understands that in the case of non-payment of the employer's contributions, such a situation could unduly penalise employees during insolvency proceedings. Therefore, the Committee notes that the situation is still not in conformity with Article 25 of the Charter.

The previous report (Conclusions 2016) indicated that under Article 9 (entitled "Procedures and Principles Regarding Payments") of the Regulations on the Wage Guarantee Fund, the declaration of claims presented by the employer must cover the period prior to the date on which the enterprise became insolvent; the report also stated that the employee must have worked in that company for at least one year prior to its insolvency. The report further indicated that under this provision, it was sufficient for the employee to have worked in the enterprise in question for at least one day during the year prior to the company becoming insolvent. Therefore, the Committee asked the state party to explain how this provision worked in practice and to clarify whether the last sentence ("it is enough for the employee to have worked in the workplace only for one day in the last year prior to the employer's becoming insolvent") was expressly included in Article 9 of the Regulations.

In reply, the report indicates that the sentence "on the condition that the employee worked in the same workplace in the last one year before the insolvency of the employer" is included in Article 1*bi*s (entitled "Insolvency of the Employer") of Law No. 4447 on Unemployment Insurance. According to the report, it is sufficient to have worked for just one day in the same workplace in the last year to be entitled to payment from the Wage Guarantee Fund. The report further indicates that workers who have worked in the same place for less than a year can also benefit from the Fund as long as they fulfil other conditions. The Committee asks that the next report explain what these conditions are. It also asks what guarantees workers (who have worked for less than a year) have that their claims will be satisfied in such cases and how much they will receive. In the meantime, it reserves its position on this point.

The Committee asks that the next report provide an estimate of the overall percentage of workers' claims that are satisfied through the Wage Guarantee Fund.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 25 of the Charter on the grounds that:

- holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred is not covered by Turkish legislation;
- the amounts due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system are not covered by Turkish legislation.