



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

September 2018

**SECOND REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

TURKEY

Written procedure

TABLE OF CONTENTS

I. SUMMARY	3
II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS	4
APPENDIX I - SITUATION OF TURKEY WITH RESPECT TO THE EUROPEAN SOCIAL CHARTER	12
APPENDIX II - DECLARATION OF THE COMMITTEE OF MINISTERS ON THE 50TH ANNIVERSARY OF THE EUROPEAN SOCIAL CHARTER.....	22

I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights would examine - in a meeting or by written procedure - the level of conformity of the country's situation, in law and in practice, with non-accepted provisions. This review would be done for the first time five years after the ratification of the Revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

As Turkey ratified the Revised Charter on 27 June 2007, accepting 91 of the 98 paragraphs, the procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Turkish ministries held in Ankara on 6 May 2013.

With a view to carrying out the procedure for the second time and considering the very limited number of provisions not accepted by Turkey, the European Committee of Social Rights proposed to apply a written procedure. By a letter of 7 September 2016, the President of the Committee invited the Turkish authorities to submit written information on the progress achieved towards accepting new provisions and, if appropriate, the reasons for the delay in accepting these provisions since the previous report.

By a letter of 4 November 2016, the Turkish authorities informed the Committee that the Government has decided to accept Articles 4§1, 5 and 6§§1-3 of the Charter and that it proposes to await the completion of the procedure for accepting these provisions before holding a meeting on the remaining non-accepted provisions of the Charter - namely Articles 2§3 and 6§4.

In response to a new letter sent by the Turkish authorities on 9 June 2017, the Committee accepted to apply the written procedure. The national report was submitted in January 2018.

The following seven provisions are not yet accepted by Turkey:

- Article 2§3 – The right to just conditions of work – Annual holiday with pay;
- Article 4§1 – The right to a fair remuneration – Decent remuneration;
- Article 5 – The right to organise;
- Article 6§1 – Right to bargain collectively – Joint consultation;
- Article 6§2 – Right to bargain collectively – Negotiation procedure;
- Article 6§3 – Right to bargain collectively – Conciliation and arbitration;
- Article 6§4 – Right to bargain collectively – Collective action.

In the light of the information provided by the Turkish authorities, the Committee confirmed its opinion expressed in the previous examination of the non-accepted provisions, namely:

- that there were no obstacles to the immediate acceptance by Turkey of Article 5 and Article 6 of the Charter;

- that in respect of the other two provisions (Article 2§3 and Article 4§1), the remaining obstacles could be easily overcome and the Turkish authorities are therefore invited to take every possible initiative with a view to accept these provisions.

The Committee remains at the disposal of the Turkish authorities and encourages them to consider acceptance of the non-accepted provisions identified in 2013 as posing no problems for acceptance.

Furthermore, the Committee invites Turkey to consider accepting the Additional Protocol providing for a system of collective complaints.

The next examination of the provisions not accepted by Turkey will take place in 2022.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Article 2§3 – The right to just conditions of work – Annual holiday with pay

Situation in Turkey

According to Article 53 of the Labour Act No. 4857, the right to paid annual leave is:

- a) 14 days for those with 1-5 years of service (five included),
- b) 20 days for those who have between 5-15 years of service,
- c) 26 days for those with more than 15 years (fifteen included).

Employees, who have completed at least one year of service in a company since being recruited, including the probationary period, shall be allowed to take annual leave with pay. For employees under the age of eighteen and over the age of fifty, the length of the annual leave with pay shall not be less than twenty days. The length of annual leave with pay may be increased by employment contracts and collective agreements.

The amendment of Article 53 of this Act adopted on 10 September 2014, has extended the duration of the annual paid leave of underground workers of 4 days for each group mentioned above.

According to Article 102 of the Civil Servants Act No. 657, the length of annual leave is the following:

- 20 days for those with 1 to 10 years of service;
- 30 days for those with more than ten years of service.

An additional two day leave is added to most of the employees as a travel time.

Opinion of the Committee

Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay.

The taking of annual holiday may be subject to the requirement that the twelve working months for which it is due have fully elapsed.

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave. This principle does not prevent however the payment of a lump sum to an employee at the end of his employment in compensation for the paid holiday to which he was entitled but which he had not taken.

At least two weeks uninterrupted annual holidays must be used during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate.

In view of these requirements and in the light of the information provided, the Committee confirmed its opinion expressed in 2013 that most of the workers concerned are correctly covered by domestic legislation relating to annual holidays with pay and it invited the Turkish authorities to continue their efforts to cover all workers as requested by Article 2§3 in order to accept this provision in the near future.

Article 4§1 – The right to a fair remuneration – Decent remuneration

Situation in Turkey

Turkey's minimum wage level is determined by the Minimum Wage Fixing Commission through a tripartite social dialogue that includes representatives of employers, workers and government (five representatives from each group). The Minimum Wage Fixing Commission works under Labour Act No. 4857. In determining the amount of the minimum wage, many factors are taken into account, including the social and economic situation of the country, indexes of living expenses, actual wages paid during the time of the meeting, living conditions, future economic expectations etc.

The table below shows the amount of the average minimum wages, minimum wage increases and inflation rates between 2012 and 2016. During this period, the rates of increase of the minimum wage were realized above the rate of inflation.

Years	Average Minimum Wage¹	Increase of Minimum Wage	Inflation
2012	913,50 TL	9,14 %	6,2 %
2013	1000,05 TL	9,47 %	7,4 %
2014	1102,50 TL	10,24 %	8,2 %
2015	1237,50 TL	12,24 %	8,8 %
2016	1647 TL	33,09 %	8,5 %

Amendments to the legislation and related developments between 2012 and 2017 concerning Article 4§1 of the Charter:

A minimum wage is set for all workers, whether covered by the Labour Act or not. The provisions of the "Minimum Wage Regulation" cover all branches of activities.

The amendments to the Minimum Wage Regulation (Official Gazette, 19 April 2014, No. 28977) included disability and colour as prohibited grounds of discrimination in the determination of the minimum wage. The amended Article prohibits discrimination in the determination of the minimum wage based on language, race, colour, gender, disability, political opinion, philosophical belief, religion, sect or any other ground.

¹ Before 2016, the minimum wage was set twice a year, for the first and the second half of the year separately. Therefore, the arithmetic average was taken for these years.

Act No. 6715 amending Labour Act and the Turkish Employment Agency (Official Gazette, 20 May 2016) introduced in Article 14 of the Labour Act the concept of "remote employment". This Article previously regulated only the concept of "on-call employment". "Remote employment" is defined as *"a labour relationship based on the principle of working from home or using technological communication tools, within the scope of the work organisation formed by the employer and established in writing."* According to the new paragraph, *"the definition of the work, the form of performance, the term and place of work, the questions concerning the wage and its payment, the equipment provided by the employer and the obligations regarding the protection of this equipment, the provisions on communication between the employer and the worker and the special working conditions shall be included in the employment contract."* The amendment also added a paragraph stating that *"In the remote employment, workers shall not be subject to any procedure different than a comparable worker, due to the nature of their employment contract, unless a reason justifying discrimination exists."* According to the amendment, the wages to be paid to home workers and domestic workers shall not be lower than the minimum wage and shall not be processed differently.

Opinion of the Committee

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for migrant workers).

The concept of "decent standard of living" goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. Beyond 60% the Committee presumes that the situation is fair within the meaning of the Charter. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living. However, a net wage which is less than 50% of the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1.

To be considered fair within the meaning of Article 4§1, remuneration must in any event be above the poverty line in a given country.

Remuneration relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the State Party concerned to conduct the needed enquiries or to provide estimates.

In view of these requirements, the Committee welcomed the efforts already made by Turkey to increase the minimum wage and the average wage in the context of the rising annual inflation rate. It noted that between 2012 and 2016, the rates of increase of the minimum wage were higher than the rate of inflation. The Committee underlined that it needs information not only on the minimum wage, but also on the average wage in the labour market. It also underlined that the principle underpinning Article 4§1 deserves the highest consideration. The question is whether the State considers that a principle protecting such a fundamental right is important and that a goal such as a fair wage must be pursued and

achieved, or not. The Committee therefore encouraged the Turkish authorities to pursue their efforts with a view to accept this important provision of the Charter.

Article 5 – The right to organise

Situation in Turkey

Turkey is party to ILO Conventions 87 (1948) on Freedom of Association and Protection of the Right to Organise and ILO Convention 98 (1949) on the Right to Organise and Collective Bargaining. The main laws related to Article 5 and 6 of the Charter are Law No. 6356 on Trade Unions and Collective Labour Agreement (07 November 2012) and Law No. 4688 on Public Servants' Trade Unions. Amendments have been made to these acts, mainly with Law No. 6289 Amending Public Servants' Trade Unions Law and Law No. 6111 making amendments to Statutory Decrees Nos. 375 and 399.

Amendments to the legislation and related developments between 2012 and 2017 concerning Article 5 of the Charter:

Law No. 6356 on Trade Unions and Collective Labour Agreements (18 October 2012) covers all those who work under a contract of employment and regulates their right to organise and bargain collectively. The purpose of the Law is to establish the principles and procedures for the establishment, management, operation, audit, activities and organisation of trade unions and confederations of workers and employers, on the conclusion of collective labour agreements in order for workers and employers to determine mutually their economic, social and working conditions, on the settlement of disputes by peaceful means and on strikes and lock-outs.

In 2013, the e-State system was designed to facilitate access to public services. With one identity verification (password, electronic signature, mobile signature, etc.), users can electronically access public services in a secure and effective manner. By introducing on 7 November 2013 the electronic membership service for trade union membership and withdrawal, the notary obligation for such acts has been abolished. The new system is simpler and easier than the notary system and does not put any financial burden on workers or their organisations. Membership applications and withdrawals via the e-State portal are protected with regard to the protection of personal data.

Membership in the trade unions is provided for in Article 15 of Law No. 4688. The decision adopted on 10 April 2013 by the Constitutional Court amended this article by giving the right to Turkish civil servants working for the Ministry of National Defense and the Turkish Armed Forces to form trade unions or join trade unions. Subsequently, the judgment of the Constitutional Court of 29 January 2014 repealed the restriction in paragraph (j) of this Article on the right to organise for civilian personnel of the security forces (police).

With the amendment to this Law, the range of civil servants who can be members of trade unions is extended. In addition to public servants who have completed their appointment and probation period, executives and assistant managers in companies with 100 or more employees, as well as certain private security staff of state institutions and organisations are removed from the group "employee who cannot be a trade union member".

In 2017, the unionization rate of workers was 11, 95% and that of public servants – 69,28%.

Opinion of the Committee

Article 5 guarantees workers' and employers' freedom to organise. This covers not only workers in activity but also persons who exercise rights resulting from work (pensioners, unemployed persons).

Forming trade unions and employer associations

Trade unions and employer organisations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply.

If fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs.

Requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations.

Trade unions and employers' organisations must be free to form federations and join similar national and international organisations and so States Parties may not limit the degree to which they are authorised to organise.

There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld.

Freedom to join or not to join a trade union

Workers must be free not only to join but also not to join a trade union.

Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. Trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.

Furthermore, no worker may be forced to join or remain a member of a trade union. Any form of compulsory trade unionism is incompatible with Article 5. The freedom guaranteed by Article 5 implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom. To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (including automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company). Consequently, clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Article 5.

The same rules apply to employers' freedom to organise.

Trade unions and employers' organisations must be autonomous in respect of their organisation or functioning. Trade unions are entitled to choose their own members and representatives. The following examples constitute infringements in breach of Article 5: prohibiting the election of or appointment of foreign trade union representatives, substantially

limiting the use that a trade union can make of its assets and substantially limiting the reasons for which a trade union is entitled to take disciplinary action against its members.

Trade unions and employers' organisations must be largely independent where anything to do with their infrastructure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme. Consequently, any excessive state interference constitutes a violation of Article 5.

Trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers' interests and company requirements permit.

Representativeness

Domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone.

For the situation to comply with Article 5, the following conditions must be met:

- a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions;
- b) areas of activity restricted to representative unions should not include key trade union prerogatives;
- c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.

Personal scope

- a) Article 5 applies to all workers in both public and private sector.
- b) The prohibition to form "trade unions" for unemployed and retired workers is not contrary to Article 5, only if they are entitled to form organisations which can take part in consultation processes connected with their rights and interests.
- c) Under Article 19§4b of the Charter, States Parties must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of becoming a founding member of and membership of trade unions and enjoyment of the benefits of collective bargaining.
- d) Restrictions with regard to the police

With regard to the police *"it is clear, in fact, from the second sentence of Article 5 and from the 'travaux préparatoires' on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article"*. In other words, police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions, and freedom of association. Compulsory membership of organisations also constitutes a breach of Article 5.

The right of members of the police service to affiliate to national employees' organisations shall not be restricted if this has as consequence of disallowing them to negotiate on pay, pensions and service conditions engaged in by these organisations.

A restriction on the right to organise for the police is only in conformity with the Charter if it satisfies the conditions laid down in Article G, which provides that any restriction has to be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the pursuance of this purpose.

As long as basic trade union guarantees are foreseen, States Parties may make distinctions according to different categories of police personnel and grant more or less favourable treatment to these different categories. They may even exclude, under specific circumstances and provided the requirements under Article G of the Charter are met, senior police officers from the scope of the right to organise.

In the context of police associations that affiliation may be made conditional upon whether the latter organisations are considered to be pursuing similar goals as the police associations.

Moreover, the situation is in conformity with Article 5 even if members of the police service have not the right to form “trade unions” as long as they are given the right to establish “professional associations” having similar characteristics and competences as trade unions.

e) Armed Forces

With regard to the armed forces, Article 5 states as follows: “*The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations*”. The Committee verifies, however, that bodies defined in domestic law as belonging to the armed forces do indeed perform military functions.

Article 5 of the Charter allows States Parties to impose restrictions upon members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations, military representative associations should under certain conditions be entitled to affiliate with national employees’ organisations.

In view of these requirements and in the light of the information provided, the Committee confirmed its opinion expressed in 2013 that, in the light of the current legal situation and practice, there were no obstacles to the immediate acceptance by Turkey of Article 5 of the Charter.

Article 6 – Right to bargain collectively

Situation in Turkey

Under Articles 2, 33 and 34 of the Trade Unions and Collective Labour Agreement Act No. 6356 of 18 October 2012, workplace level collective labour agreements, enterprise (company) level collective labour agreements, group level (multi-employer) collective labour agreements and framework agreements may be concluded.

The threshold of 3% provided for in Article 41 of this Act to become a bargaining agent was reduced to 1% by Act No. 6552 of 10 September 2014. At present, trade unions do not need 3% of members to bargain collectively, regardless of affiliation or non-affiliation to the confederations participating in the Economic and Social Council.

Act No. 6356 was amended by Act No. 6745 of 20 August 2016 to give the right to bargain collectively to the 10 trade unions without respecting the sectorial threshold until 06 September 2018.

Article 50 of Act No. 6356 provides for a mediation procedure allowing the bargaining parties to agree on a mediator from the official list of mediators. Where this is not the case, the

competent authority appoints a mediator from the list, either with the participation of one of the parties or on its own initiative. Bargaining parties have no obligation to accept the mediator's proposals. The purpose of this provision is to give the parties a last-minute opportunity for a peaceful settlement of the dispute before starting the strike.

The official list of mediators is determined by a selection committee established in accordance with the provisions of the Regulation concerning the application to the mediator or the arbitrator during collective bargaining (published in the Official Gazette on 07 December 2013). The selection committee is chaired by the Minister of Labour and Social Security. It is composed of the Undersecretary of the said ministry or his deputy, the General Director of Labour, an academic member appointed by the Higher Council of Education, two members appointed by the two most representative workers' organisations and two members appointed by the most representative employers' organisation.

The coverage rate of collective agreements for workers was 9.21% in 2015.

Since all public servants are covered by collective agreements, whether they are trade union members or not, the coverage rate for public servants is 100 %.

Opinion of the Committee

All workers and employers have the right to bargain collectively.

The exercise of the right to bargain collectively and the right to collective action represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to:

- just conditions of work (Article 2),
- safe and healthy working conditions (Article 3),
- fair remuneration (Article 4),
- information and consultation (Article 21),
- participation in the determination and improvement of the working conditions and working environment (Article 22),
- protection in cases of termination of employment (Article 24),
- protection of the workers' claims in the event of the insolvency of their employer (Article 25),
- dignity at work (Article 26),
- workers' representatives protection in the undertaking and facilities to be accorded to them (Article 28),
- information and consultation in collective redundancy procedures (Article 29)

Nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular. Therefore, any restrictions must comply with the requirements set out in Article G of the Charter.

The Committee welcomed the progress made by Turkey in guaranteeing the effective right to bargain collectively and reiterated its view expressed in 2013 that there were no obstacles to the immediate acceptance by Turkey of Article 6 of the Charter.

APPENDIX I - SITUATION OF TURKEY WITH RESPECT TO THE EUROPEAN SOCIAL CHARTER

Signatures, ratifications and accepted provisions

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

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

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

The Charter in domestic law

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

Table of accepted provisions

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

Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted a [report concerning Turkey](#) in 2013.

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

Monitoring the implementation of the European Social Charter ²

I. Reporting system ³

Reports submitted by Turkey

Between 1989 and 2018, Turkey submitted 15 reports on the application of the 1961 Charter and 9 reports on the Revised Charter.

The [9th report](#), submitted on 20 April 2017 covers the accepted provisions of the Revised Social Charter relating to thematic group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23, 30).

In addition, the report concerns the information required by the Committee in the framework of Conclusions 2015 relating to thematic group 4 "Children, families, migrants" (Articles 7, 8, 16, 17, 19, 27, 31), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions have been published in January 2018.

The 10th report, which was to be submitted by 31/10/2017, should concern the accepted provisions relating to Thematic group 3 "Labour Rights", namely:

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

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information.

Conclusions with respect to these provisions will be published in January 2019.

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

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

³ Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

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

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

Situations of non-conformity ⁴

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2016

► *Article 15§2 – Right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

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

► *Article 15§4 – Right to work – Vocational guidance, training and rehabilitation*

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

► *Article 10§4 – Right to vocational training – Long term unemployed persons*

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

► *Article 15§1 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities*

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

► *Article 15§2 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities*

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

► *Article 15§3 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community*

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

► *Article 18§3 – Right to engage in a gainful occupation in the territory of other Parties – liberalising regulations*

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

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

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

it has not been established that legal remedies are available to workers for infringements of their right to take part in the determination and improvement of working conditions and the working environment.

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

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

⁴ Further information on the situations of non-conformity is available on the [HUDOC database](#).

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

Thematic Group 2 “Health, social security and social protection” - Conclusions 2017

- ▶ *Article 353 – Right to safe and healthy working conditions - enforcement of safety and health regulations*
 - measures taken to reduce the number of accidents at work are insufficient;
 - the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.
- ▶ *Article 1151 – Right to protection of health – Removal of the causes of ill-health*
Measures taken to reduce infant and maternal mortality rates have been insufficient.
- ▶ *Article 1251 – Right to social security– Existence of a social security system*
It has not been established that the existing social security schemes cover a significant percentage of the population.
- ▶ *Article 1351 – Right to social and medical assistance – adequate assistance for every person in need*
It has not been established that the level of social assistance paid to a single person without resources is adequate.
- ▶ *Article 1451 – Right to social welfare services – promotion or provision of social welfare services*
It has not been established that the number of social services staff is adequate and has the necessary qualification to match user’s needs.
- ▶ *Article 1452 – Right to social welfare services – public participation in the establishment and maintenance of social services*
It has not been established that the conditions under which non-public providers take part in the provision of welfare services are adequate.
- ▶ *Article 23 – Right of the elderly to social protection*
 - during the reference period, there was no anti-discrimination legislation;
 - it has not been established that there is an assisted decision-making procedure for elderly persons.
- ▶ *Article 30 – Right to be protected against poverty and social exclusion*
There is no adequate overall and coordinated approach to combating poverty and social exclusion.

Thematic Group 3 “Labour rights” - Conclusions 2014

- ▶ *Article 251 – Right to just conditions of work– Reasonable working time*
The legislation allows weekly working time to be up to 66 hours.
- ▶ *Article 256 – Right to just conditions of work– Information on the employment contract*
It is not established that the right to information on the employment contract is fully guaranteed.
- ▶ *Article 452 – Right to a fair remuneration – Increased remuneration for overtime work*
Civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.
- ▶ *Article 454 – Right to a fair remuneration – reasonable notice of termination of employment*
No period of notice is required for dismissal during a probationary period.
No period of notice is required for dismissal on the grounds of long-term illness, custody or arrest.
- ▶ *ARTICLE 455 – RIGHT TO A FAIR REMUNERATION – LIMITS TO DEDUCTION FROM WAGES*

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

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

It has not been established that legal remedies are available to workers for infringements of their right to take part in the determination and improvement of working conditions and the working environment (**Conclusions 2016**).

► *Article 26§1 – Right to dignity in the workplace - Sexual harassment*

It has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

► *Article 26§2 – Right to dignity in the workplace - Moral harassment*

It has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work (**Conclusions 2014 and 2016**).

► *Article 26§2 – Right to dignity in the workplace - Moral harassment*

It has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work (**Conclusions 2014 and 2016**).

Thematic Group 4 “Children, families, migrants” - Conclusions 2015

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

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

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

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

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

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

► *Article 7§5 – Right of children and young persons to protection – Fair pay*

It has not been established that the allowances paid to apprentices are appropriate.

► *Article 7§6 – Right of children and young persons to protection – Inclusion of time spent on vocational training in the normal working time*

It has not been established that the time spent in vocational training by young workers is included in the normal working time and remunerated as such.

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

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

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

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

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

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

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

- there is no adequate protection in the Labour Act against unlawful dismissals during pregnancy or maternity leave;
- not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave;
- it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

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

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

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

- It has not been established that associations representing families are consulted when framing family policies;
- There is no general system of family benefits.

▶ *ARTICLE 17§1 – RIGHT OF CHILDREN TO SOCIAL AND ECONOMIC PROTECTION – ASSISTANCE, EDUCATION AND TRAINING*

- NOT ALL FORMS OF CORPORAL PUNISHMENT ARE PROHIBITED IN THE HOME, IN SCHOOLS AND IN INSTITUTIONS;
- IT HAS NOT BEEN ESTABLISHED THAT MINORS ARE ALWAYS SEPARATED FROM ADULTS IN PRISONS (**CONCLUSIONS 2017**).

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

Irregularly present children do not have effective access to education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

► *Article 27§1 – Right of workers with family responsibilities to equal opportunity and treatment – Participation in working life*

It has not been established that workers on parental leave are entitled to social security benefits.

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

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

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

- Workers in companies with less than 30 employees are not protected against dismissal due to family responsibilities.
- It has not been established that adequate compensation is provided for in cases of unlawful dismissal due to family responsibilities.

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

- it has not been established that adequate housing is defined in law (**Conclusions 2017**);
- it has not been established that there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard (**Conclusions 2017**);
- it has not been established that the legal protection of the right to adequate housing is guaranteed (**Conclusions 2017**).

► *Article 31§2 – Right to housing – reduction of homelessness*

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

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

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

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

Thematic Group 1 "Employment, training and equal opportunities"

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

Thematic Group 2 "Health, social security and social protection"

- ▶ Article 3§1 - Conclusions 2017
- ▶ Article 3§2 - Conclusions 2017
- ▶ Article 3§4 - Conclusions 2017
- ▶ Article 11§3 - Conclusions 2017
- ▶ Article 12§4 - Conclusions 2017
- ▶ Article 13§4 - Conclusions 2017
- ▶ Article 30 - Conclusions 2013

Thematic Group 3 "Labour rights"

- ▶ Article 4§3 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

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

II. Examples of progress achieved in the implementation of rights under the Charter (update in progress)

Children

- ▶ Legislation aiming at increasing the availability of childcare (Law No. 5212).
- ▶ Legislation against domestic violence (Law No. 4320/1998).
- ▶ Under Section 82 of the Regulation on Seafarers of 31 July 2002, young workers under 18 years of age must now undergo regular medical examinations every 12 months.
- ▶ In 1997, compulsory education was extended to eight years.
- ▶ The Labour Code, which entered into force in 2003, states that employment of children over the age of 14 in light work is permitted on the condition that they have completed compulsory education.

Employment

- ▶ Act No. 4817 regarding work permits for foreigners in Turkey which entered into force on 6 September 2003 provides that a foreign worker having a work permit may change his workplace and professional activity subject to the authorisation by the Ministry of Labour and Social Security.
- ▶ Since the repeal of Article 3/II A of the Act No. 506 on Social Insurance, non-nationals who have a working permit in Turkey are automatically insured for long-term risks, including unemployment. Application is no longer conditioned by the existence of bilateral or multilateral agreements.
- ▶ On 3 January 2005 the fee that employers had to pay for notification of vacancies to the employment services was scrapped.

Health

- ▶ A number of measures to reduce infant and maternal mortality, including access to family doctors, the increase in the number of "Baby Friendly Hospitals" or the "Guest Mother Project", have led to very significant improvements in respect of infant and maternal mortality rates.
- ▶ Amendments to Law No. 4207 on Preventing the Damage of Tobacco Products and their Control, new regulations have started to be implemented as of May 2008 on passive smoking. It is now prohibited to smoke in all open and closed public spaces.

Labour rights

- ▶ The constitutional amendments adopted in 2010 grant civil servants the right to collective bargaining. The prohibition of politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of work premises, and other forms of action has been removed. And so has the prohibition of membership of more than one trade union at the same time in the same branch of activity.
- ▶ The new law on Occupational Health and Safety (No. 6331) which entered into force on 30 December 2012, imposes an obligation to assess the existing and potential risks and to identify the prevention measures. This law complies with the Occupational Safety and Health Framework Directive 89/391/EEC and ILO Conventions No. 155 and 161.
- ▶ The Circular no. 2010/14 of the Prime Ministry (the Official Gazette no. 27591, 25 May 2010) was put into force with a view to strengthening the socio-economic status of women, ensuring equality of women and men in social life and enhancing employability of women.

Social protection

- ▶ Introduction of a system of unemployment benefits (Act reforming certain aspects of the social security system, entered into force on 8 September 1999).
- ▶ New legislation in Turkey to strengthen the link between social assistance and the labour market (Law No 6704) was adopted on 14 April 2016.
- ▶ The number of people insured for old age has increased by 19% (from 17 076 451 to 20 380 319) from 2011 to 2015, while the total population growth in the same period was below 6% (from 74 525 696 to 78 741 053);
- ▶ In 2013, the personal coverage of healthcare insurance has been extended to children below 18 years old who were not already covered on account of their family or curators, to persons under a protective injunction (victims of domestic violence), to persons training to work in penal institutions and jails and their families, to persons who graduated from high-schools or higher education in the last two years (subject to age conditions) and were not already covered as dependants;
- ▶ In 2014 (Law No. 6552) the time limit for survivors to claim their pension has been extended from 6 to 12 months;

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

Social services

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

Non-discrimination

► General legislation (Labour Act No. 4857) against discrimination in employment (extension of the concept, possibility of reinstatement and of compensation proportional to the damage suffered etc.).

Non-discrimination (Nationality)

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

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

Non-discrimination (Sex)

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

Non-discrimination (Disability)

► On the basis of Decree No. 573/97 persons with disabilities are permitted access to special and higher education.

► The first Disability Law (No. 5378) passed in 2005 was revised on 6 February 2014 in order to bring it in line with the obligations under the UN Convention on the Rights of Persons with Disabilities. It covers equal rights for persons with disabilities in the areas of education and vocational training, while specifically prohibiting discrimination on the ground of disability.

► Special conditions of examination have been introduced for persons with disabilities to get access to public sector job competitions (amendment of the Civil Servants Law in 2011).

Social security

► The number of people insured for old age has increased by 19% (from 17 076 451 to 20 380 319) from 2011 to 2015, while the total population growth in the same period was below 6% (from 74 525 696 to 78 741 053)

► In 2013, the personal coverage of healthcare insurance has been extended to children below 18 years old who were not already covered on account of their family or curators, to persons under a protective injunction (victims of domestic violence), to persons training to work in penal institutions and jails and their families, to persons who graduated from high-schools or higher education in the last two years (subject to age conditions) and were not already covered as dependants.

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

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

Social and medical assistance

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

APPENDIX II - DECLARATION OF THE COMMITTEE OF MINISTERS ON THE 50TH ANNIVERSARY OF THE EUROPEAN SOCIAL CHARTER

*(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on Governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.