EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

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DRAFT THIRD REPORT ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

TÜRKIYE

TABLE OF CONTENTS

I. SUMMARY

1. Background

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 (RESC) should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights (ECSR) 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, five years after ratification of the Revised European Social Charter (hereafter, the Revised Charter) and every five years thereafter, the European Committee of Social Rights (hereafter, the Committee) reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance, given that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the Article 22 procedure is therefore to review the situation after five years and encourage acceptance of more provisions.

Türkiye ratified the Revised Charter on 27 June 2007, accepting 29 of the 31 Articles, and 91 of the 98 paragraphs. Türkiye has currently not accepted the following 7 numbered articles and paragraphs: Article 2§3, Article 4§1, Article 5, and Article 6§§1-4.

2. Previous Examinations

The procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the Committee 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 Türkiye, the Committee proposed to apply a written procedure. By a letter of 7 September 2016, the President of the Committee invited the Government 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 Government informed the Committee that it had decided to accept Articles 4§1, 5 and 6§§1-3 of the Charter and that it proposed 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 Government on 9 June 2017, the Committee accepted to apply the written procedure. The national report was submitted in January 2018.

In the light of the information provided by the Government, the Committee confirmed its opinion expressed in the first examination of the non-accepted provisions, specifically that:

- there did not appear to be obstacles to the acceptance by Türkiye of Article 5 and 6;
- in respect of Articles 2§3 and 4§1, the remaining obstacles could be overcome, and the Turkish authorities were therefore invited to take every possible initiative with a view to accepting these provisions.

3. Current Examination

The current third examination of non-accepted provisions of the Revised Charter in 2022 is based on a written procedure.

The Government was invited on 6 October 2021 to submit written information before 31 March 2022. The Government submitted the report on 08 March 2022.

The following seven provisions are not yet accepted by Türkiye:

- The right to just conditions of work – annual holiday with pay (Art. 2§3)
- The right to a fair remuneration – decent remuneration (Art. 4§1)
- The right to organise (Art. 5)
- The right to bargain collectively – joint consultation (Art.6§1)
- The right to bargain collectively – negotiation procedure (Art. 6§2)
- The right to bargain collectively – conciliation and arbitration (Art. 6§3)
- The right to bargain collectively – collective action (Art. 6§4)

In the light of the information provided by the Government, the Committee concludes that there does not appear to be obstacles to the acceptance by Türkiye of Article 6§§1-3 of the Charter. Regarding Article 5, more information would be needed to make a full assessment but there does not seem to be obstacles to acceptance. In respect of the Articles 2§3, 4§1 and 6§4 the Committee considers that the remaining obstacles could be overcome and encourages the Government to take every possible initiative to this end.

The Committee wishes to draw attention to the importance of Articles 5 and 6, due to their unique nature: not only do they represent rights as such (freedom to organise and right to collective bargaining), but they should also be considered as tools in order to facilitate the implementation of other rights which are enshrined in the Charter. Therefore, through the acceptance of Articles 5 and 6, Türkiye would not only grant additional rights, but would improve the implementation of existing rights. Therefore, the Committee encourages Türkiye to join as soon as possible the other 40 state parties that have accepted Article 5 and 39 state parties that have accepted Article 6.

The Committee invites Türkiye to consider accepting additional provisions of the Revised Charter as soon as possible so as to consolidate the role of the Charter in guaranteeing and promoting social rights.

The Committee remains at the disposal of the Government for continued dialogue on the non-accepted provisions and encourages them to consider acceptance of the non-accepted provisions identified as posing no problems for acceptance.

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

The next examination of the provisions not accepted by Türkiye will take place in 2027.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Article 2§3 – *The right to just conditions of work: annual holiday with pay*

Situation in Türkiye

The report provided by the Turkish authorities reproduces the information provided in 2018.

According to Article 53 of the Labour Act No. 4857, the right to annual paid 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 a minimum of one year of service in a company after being recruited, including the probationary period, are allowed to take annual paid leave. For employees under the age of eighteen and over the age of fifty, the length of annual paid leave is to be no less than twenty days. The length of annual paid leave may be increased by employment contracts and collective agreements.

An amendment to Article 53 of Labour Act No. 4857 was adopted on 10 September 2014, and the duration of the annual paid leave of underground workers was increased by four days for the groups concerned.

According to Article 102 of Civil Servants Act No. 657, the length of annual paid leave is the following:
- 20 days for those with 1 to 10 years of service;
- 30 days for those with more than 10 years of service.

The Government also indicates that the opinion of social partners was taken into account through social dialogue mechanisms. However, there is no consensus yet among social partners with regards to the duration of annual paid leave. As a result, the government considers that the national legislation is not yet in conformity with the Charter under this provision.

Opinion of the Committee

Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay. National law may require that the 12 working months for which annual holidays are due have first gone by.[1]

The Committee underlines that annual leave may not be replaced by financial compensation, as employees should not have the option of giving up their annual leave.[2] However, this principle does not prevent the payment of compensation at the end of the employment period for the paid holiday to which the employee was entitled but did not take.[3] In this case. at least two weeks' uninterrupted annual holidays must be used during the calendar year. Annual holidays exceeding two weeks may be postponed in particular circumstances as defined by national law, if adequately justified,[4] for example by "urgent operational reasons".[5]

[1] Conclusions I - Statement of interpretation - Article 2.
[2] Conclusions I - Ireland - Article 2§3.
[3] Conclusions I - Statement of interpretation - Article 2.
[4] Conclusions 2007 - Statement of interpretation - Article 2§3
[5] Conclusions 2014 - Bosnia and Herzegovina - Article 2§3

Workers who are ill or injured during their annual leave are entitled to take the days lost at another time so that they receive the four-week annual holiday[6]; national regulations may require a medical certificate in such cases[7].

The Committee notes that the information provided by the Government in 2022 reproduces the content provided in the previous monitoring cycle of non-accepted provisions in 2018. In light of the information provided and the requirements presented above, the Committee maintains its views expressed in 2018, that most of the workers concerned are correctly covered by domestic legislation relating to annual holidays with pay. Hence it invites the Government to strengthen their efforts to ensure that all workers benefit from a minimum of 20 working days' paid leave as required by Article 2§3 with a view to accepting this provision in the near future.

Article 4§1 – The right to a fair remuneration: decent remuneration

Situation in Türkiye

The report submitted by the Government indicates changes in the amount of the net minimum wages between 2017 and 2022, reflecting in general an increase above the rate of inflation.

Minimum Wage by Years

Years	Net Minimum Wage	Increase of Minimum Wage %	Inflation %	Real Increase %
2017	TL 1 404.06	**8,0**	11,1	**-3,1**
2018	TL 1 603.12	**14,2**	16,2	**-2,0**
2019	TL 2 020.90	**26,0**	15,5	**10,5**
2020	TL 2 324.71	**15,1**	12,3	**2,8**
2021	TL 2 825.90	**21,6**	17,9	**3,7**
2022	TL 4 253.40 TL	**50,4**	21,4	**29,0**

The report indicates that in Türkiye, the calculation of the minimum wage is based on the employee, rather than the "employee and his family" as stated by Article 4§1, and there has been no change to the legislation in this respect since the previous examination.

The Government also acknowledges in its report that a party to be considered in conformity with this provision should ensure that the minimum wage be more than 60% of the average wage.

Opinion of the Committee

Article 4§1 establishes the right to a fair remuneration in order to ensure a decent standard of living for workers and their families. It applies to all workers, including to civil servants and contractual staff in the public sector,[8] to branches or jobs not covered by collective agreements, to atypical forms of employment,[9] and to all employment regimes or statuses (e.g. minimum wage for migrant workers).[10]

[6] Conclusions XII-2 - Statement of interpretation - Article 2§3
[7] Conclusions 2010 - Belgium - Article 2§3
[8] Conclusions XX-3 - Greece - Article 4§1
[9] Conclusions 2014 - France - Article 4§1
[10] Conclusions 2014 - Andorra - Article 4§1

According to the Committee, the concept of “decent standard of living” goes beyond material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.[11]

To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration paid in the labour market must not fall below 60% of the net average national wage.[12] This assessment is thus based on net amounts, after deduction of taxes and social security contributions.

If the lowest wage is between 50% and 60%, the state party has to provide detailed evidence that the lowest wage is sufficient to provide the worker with decent standard of living. In cases where the lowest wage is less than half of the average wage, the situation is per se in breach of the Charter. The wage must be clearly above the poverty line as defined for a given country, irrespective of the percentage.[13]

Remuneration is defined by the Committee as compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done.[14] It covers, where applicable, special bonuses and gratuities. Social transfers (for example social security benefits) are taken into account by the Committee only when they have a direct link to the salary.

For young workers under the age of 25, it is in conformity with the Charter to provide for a lower minimum wage and it within the confines of proportionality as defined by Article G (it pursues a legitimate aim of employment policy and is proportionate to the achievement of that aim).[15] The Committee has considered a reduction of the minimum wage to below the poverty level and applied to all workers under the age of 25 to be clearly disproportionate.[16]

The Committee welcomes the efforts already made by Türkiye to increase the net minimum wage in the context of the rising annual inflation rate. It notes that between 2017 and 2022, the rates of increase of the net minimum wage were higher than the rate of inflation.

The Committee recalls that in order to assess correctly the situation, it requires information not only on net minimum wage, but also on the net average wage in the labour market, which is lacking.

The Committee stresses the importance of protecting such a fundamental right as decent remuneration. Therefore, it encourages the Government to further increase its efforts in removing all obstacles to the acceptance of this important provision of the Charter, especially as they had announced being ready to accept this provision in their letter addressed to the Council of Europe on 4 November 2016.

Article 5 – *The right to organise*

Situation in Türkiye

The Government indicates that Türkiye is party to ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise, ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining, as well as ILO Convention No. 151 (1978) on

[11] Conclusions 2010 - Statement of interpretation - Article 4§1
[12] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[13] Conclusions XX-3 - Greece - Article 4§1
[14] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[15] General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Collective Complaint No. 66/2011, decision on the merits of 23 May 2012
[16] Ibid., and Conclusions 2014 - Ireland - Article 4§1

Labour Relations (Public Service). The main domestic laws related to Articles 5 and 6 of the Revised Charter are Law No. 6356 on Trade Unions and Collective Labour Agreement, and Law No. 4688 on Public Servants' Trade Unions and Collective Agreement. Amendments have been made to these acts, mainly with Law No. 6289 on Amending Public Servants' Trade Unions Law No. 4688 and Law No. 6111 making amendments to the Statutory Decree Nos. 375 and 399.

The Government states that ban of union membership in public service has been shaped in line with legal regulations, judicial decisions, ILO Convention No. 87, and ILO Convention No. 151. Pursuant to the Constitution, Article 15 of Law No. 4688 bans those working in strategically important organisations and in positions who use the State's disciplinary and intelligence powers from becoming members of trade unions and establishing them.

In compliance with this article, the following categories are banned from becoming members of the unions and establishing unions: members of the armed forces, members of the National Intelligence Organisation, members of security services, public servants working in penitentiary institutions, and officers, contracted officers, non-commissioned officers, contracted non-commissioned officers, specialist gendarmes, specialist non-commissioned officers, contracted non-commissioned officers and contracted privates in the Gendarmerie General Command and the Coast Guard Command.

Officers who work for the Gendarmerie General Command and the Coast Guard Command are included into the said article by Decree Law No. 682, published in the Official Gazette dated 23 January 2017.

The Government indicates that due to justifiable reasons for these exceptions related to the execution of public services, Article 15 of aforementioned Law No. 4688 would continue to be applied in its current form.

Opinion of the Committee

The Committee takes note of the information provided by the Government.

The Committee emphasises that the right to organise is one of the key trade union rights in the Charter. This right, together with the right to bargain collectively (Article 6), establishes the main standard for engaging in industrial relation for employer and employee organisations.

In this context, it stresses that, according to Article A of the Revised Charter, Articles 5 and 6 are two of the nine core articles of the Charter. Both rights are indispensable ancillary rights to those guaranteeing the right to work and to securing decent working conditions. They contribute to enabling worker participation in employment-related decision-making. Genuine trade union representation is a vital prerequisite for worker protection, particularly in difficult economic and political circumstances. The right to organise confers both a positive and a negative state obligation: to enable by legislative and other measure the right to organise; and to refrain from unjustly interfering with this right.

Article 5 guarantees workers' and employers' freedom of association and the right to form and join trade unions and employers' organisations. Article 5 applies to all workers from the public and the private sector.[17] Certain restrictions to this right are, however, permissible under the terms of the two last sentences of Article 5 in respect of members of the police and armed forces.[18]

[17] Conclusions I - Statement of interpretation - Article 5
[18] Ibid.

Unemployed and retired workers may join and remain in trade unions.[19] However, States Parties are not required to allow them to form trade unions, as long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.[20]

Although the right guaranteed in Article 5 is the right of individuals to form and join trade unions, Article 5 provides that workers must be free to form local, national, or international organisations. This implies for the organisations themselves the right to establish and join federations. A State Party cannot limit the level at which workers may organise and must allow organisations to affiliate to federations and confederations.[21]

Restrictions with regard to the police

With regard to the police it is clear from the second sentence of Article 5 and from the *travaux préparatoires* on this provision, that States Parties can restrict but not to completely deny police officers' right to organise.[22] 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.[23]

It follows, firstly, that police personnel must be able to form or join genuine organisations for the protection of their material and moral interests and secondly, that such organisations must be able to benefit from most trade union prerogatives. Basic trade union prerogatives means the right to express demands with regard to working conditions and pay, the right of access to the working place as well as the right of assembly and speech. Such definition applies to professional organisations of police officers as well as to other professional organisations.[24]

The right of police members to affiliate to national employees' organisations shall not be restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions. Moreover, when the restriction has the factual effect of depriving the representative associations of the most effective means of negotiating the conditions of employment on behalf of their members, it cannot be considered as a proportionate measure for achieving public safety and public interest purposes.[25]

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.[26] 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.[27]

Article 5 allows national legislation to require that professional police associations be composed exclusively of police members. Article 5 allows national legislation to require that professional associations of police personnel be authorised to affiliate only to police trade union organisations, whether national or international.[28]

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[19] Ibid.
[20] Ibid.
[21] European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014
[22] European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001
[23] Ibid., see also Conclusions XX-3 - United Kingdom - Article 5
[24] European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001
[25] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, §§ 119 and 121
[26] European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001 § 27 and European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012 § 109
[27] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012 § 79
[28] European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001 §§ 35 and 37

The situation is in conformity with Article 5 where police members do not have the right to form trade unions, but are given the right to establish professional associations having similar characteristics and competences as trade unions.[29]

Restrictions with regard to the 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.[30]

Article 5 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.[31] However, these restrictions may not go as far as to suppress entirely the right to organise, such as a blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations.[32]

In considering whether the restriction is necessary in a democratic society within the meaning of Article G of the Charter, the Committee considers that the members of the armed forces who can be excluded from the right to freedom of association should be defined in a restrictive manner and that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, *inter alia*, national security.[33]

In the case of military representative associations, a complete ban on affiliation to national employees' organisations is not necessary or proportionate and therefore does not fulfil the requirements of Article 5 read in the light of Article G of the Charter, in particular when the restriction has the effect of depriving the representative associations of an effective means of negotiating the conditions of employment on behalf of their members, in so far as national umbrella organisations of employees possess significant bargaining power in national negotiations.[34]

The Committee takes note that ban of union membership in public service has been shaped in line with legal regulations, judicial decisions, ILO Convention No. 87, and ILO Convention No. 151.

Referring to the previous two reports on non-accepted provisions in respect of Türkiye,[35] the Committee recalls that two decisions of the Constitutional Court from 10 April 2013 and 29 January 2014, which are legally binding on the executive, legislative and judicial powers, gave the right to organise to Turkish civil personnel working for the Turkish Armed Forces (including the Ministry of National Defence and the Gendarmerie General Command and the Coast Guard Command) and to civilian personnel of the security forces (police).

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[29] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012 § 77
[30] European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013 § 59, see also Conclusions XVIII-1 - Poland - Article 5
[31] European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013 § 80
[32] Ibid. § 84
[33] Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016 § 47
[34] Ibid. § 90
[35] First Report on Non-Accepted Provisions of the European Social Charter - Türkiye (2013) and Second Report on Non-Accepted Provisions of the European Social Charter - Türkiye (2018)

In the light of the above information and considerations, the Committee encourages Türkiye to consider acceptance of Article 5 of the Charter while emphasising that additional information is needed on the possible existence of professional associations – in the absence of trade unions – in a position to represent non-civilian members of the armed forces (including the gendarmerie) and the police (failing which it could be tantamount to a blanket ban) before making a firm assessment of the situation in Türkiye on this particular point.

Article 6 – Right to bargain collectively

Situation in Türkiye

The Government indicates in its report a number of legislative changes in the period 2017-2022. On 12 October 2017, Law No. 6356 on Trade Unions and Collective Bargaining Agreements was amended. In disputes concerning (i) working conditions required in workplaces for which enterprise-level collective agreement is to be concluded, (ii) the interpretation of collective agreements, and (iii) whether a strike or lockout is unlawful, regional courts of justice have been designated as final courts of appeal instead of the Supreme Court. In disputes concerning the competence of concluding a collective agreement, regional courts of justice were designated as competent courts with the Supreme Court being competent on appeal for final decisions.

With the additional Article 2, dated 20 November 2017, introduced in Law No. 6356, it has been made possible to sign a framework agreement protocol between the government, public employers' associations and trade union confederations to determine the financial and social rights of employees working in public institutions and organisations.

Article 63 of Law No. 6356 on the postponement of strikes and lockouts stipulated that lawful strike or lockout that had been called or commenced could be suspended by the President for 60 days if it had been prejudicial to public health or national security, metropolitan municipalities' urban public transportation services, economic or financial stability in banking services. With a decision by the Constitutional Court published in Official Gazette on 13 February 2020, the postponement of strikes or lockouts in urban public transport services and banking services was annulled as unconstitutional.

With Law No. 7176, 10 unions (Deriteks, Öz Maden-İş, Tümka-İş, Nakliyat-İş, Sosyal-İş, Dev Turizm-İş, T. Büro-İş, Tüm Emek Sen, Spor Emek Sen, Oyuncular Sendikası) have been exempted from the sectoral threshold for one year (12.06.2019- 17.07.2020). Moreover, in the 6th Term Public Employees Collective Agreement covering 2022 and 2023, the collective bargaining bonus increased from TL 135 to TL 497 for union member public employees. Finally, social security contribution support was provided in 2020 and 2021 for the businesses where collective agreements are concluded.

Coverage Rates of Collective Agreements for Workers

The Government reports an increase in the coverage rate of collective agreements for workers from 9.21% in 2015 to 13.02% in 2021.

In respect of public servants, the government states that they are covered by a different personnel regime than workers, which includes some advantages, including job security. Their coverage rate by collective agreements is 100%, irrespective of whether they are members of trade unions. With the amendment made in 2012 to Law No. 4688 on Public Servants' Trade Unions and Collective Agreement, mediation and conciliation mechanisms have been included in the negotiation process of collective agreements.

However, the right to strike for public servants is not allowed in domestic legislation.

On this latter reason, the Government considers that the domestic the situation in Türkiye in respect of Article 6 is not in conformity with the Charter due to unequal coverage in the private and public sectors.

Opinion of the Committee

The Committee takes note of the new information provided by Türkiye on guaranteeing the effective right to bargain collectively.

The Committee highlights that collective bargaining – in tandem with the right to organise – is a fundamental right to improve the working conditions of the employees. It is a crucial instrument for employers' organisations and trade unions to establish working conditions and better employment standards for their constituencies. Issues typically subject to bargaining processes are equal treatment, wage, working time, health and safety, and training.

The Committee reiterates that all workers and employers have the right to bargain collectively.

The exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§2 and 6§4 of the Charter, 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).[36]

Nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular.[37] Therefore, any restrictions must comply with the requirements set out in Article G of the Charter.[38]

Specific restrictions to the right to strike

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.[39] In providing that restrictions on the enjoyment of

[36] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, §109
[37] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, §159
[38] European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, §118
[39] Conclusions 2014, Norway; see also Conclusions X-1 (1987), Norway (regarding Article 31 of the 1961 Charter to which Article G of the Revised Charter corresponds).

Charter rights must be “prescribed by law”, Article G does not require that such restrictions necessarily be imposed solely through provisions of statutory law.[40] The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned.[41] Moreover this expression includes the respect of fair procedures.[42]

The prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (e.g. goals which do not relate to the enjoyment of labour rights, or relate to discriminatory objectives) is not necessarily contrary to Article 6§4.[43] Excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) May be limited or prohibited by law.[44]

However, national legislation which prevents *a priori* the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards are not in conformity with Article 6§4, as it infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers.[45] In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.[46] Employers should not have the power to unilaterally determine the minimum service required during a strike.[47]

i. Restrictions related to essential services/sectors

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health.[48]

However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector.[49] Simply prohibiting these workers from striking, without distinguishing between their particular functions, cannot be considered proportionate to the particular circumstances of each of the sectors concerned, and thus necessary in a democratic society.[50] At most, the introduction of a minimum service requirement in these sectors might

[40] European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, § 43
[41] Ibid., § 43
[42] Ibid., § 44
[43] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, § 119
[44] Ibid., § 119
[45] Ibid., § 120
[46] Ibid, § 120
[47] Conclusions 2018, Serbia
[48] Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, §114; Conclusions I - Statement of interpretation - Article 6§4
[49] Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, §114
[50] Conclusions XVII-1 - Czech Republic - Article 6§4

be considered in conformity with Article 6§4.[51] Where there is no provision for the introduction of a minimum service as regards the emergency and rescue services, nuclear facilities and the transport sector, and where strikes are simply prohibited for certain categories of employees, the situation is not in conformity with the Charter.[52]

ii. Restrictions related to public officials

As regards the right of public servants to strike, the Committee recognises that, under Article G of the Revised Charter, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants.[53] Restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G.[54]

On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter.[55] Allowing public officials only to declare symbolic strikes is not sufficient.[56]

Concerning the armed forces, the need to be able to maintain the command operational in the most extreme situations of military exposure may not justify the absolute prohibition of the right to strike, because it is not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society.[57] Minimum services may be imposed in the defence sector in the event of a strike.[58] Other measures may be provided for by law, such as an effective and regular procedure of negotiation at the highest level between the members of the armed forces and the command authority regarding not only the material and salary conditions but also the work organisation, or conciliation or arbitration procedure.[59] With such measures - minimum services and/or an effective procedure of negotiation or conciliation - the prohibition on the exercise of the right to strike would be proportionate.[60]

The margin of appreciation accorded to States in terms of the right to strike of the armed forces is greater than that afforded to States Parties in respect of the police.[61] Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it.[62] On the other hand, the imposition of restrictions as to the mode and form of such strike action is not necessarily contrary to the Charter.[63]

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[51] Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, §114
[52] Conclusions 2018 - Ukraine - Article 6§4
[53] European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014 § 113, citing Conclusions I - Statement of interpretation - Article 6§4
[54] Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation (ETUC) v. Bulgaria, Collective Complaint No. 32/2005, §45
[55] European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014 § 113, citing Conclusions I - Statement of interpretation - Article 6§4
[56] Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation (ETUC) v. Bulgaria, Collective Complaint No. 32/2005, § 44-46
[57] Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, § 152
[58] Ibid.
[59] Ibid.
[60] Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, § 152
[61] European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014 § 116
[62] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, § 211
[63] ibid.

The Committee takes note of developments in Türkiye regarding the right to bargain collectively and considers that there does not appear to be any obstacles to the acceptance by Türkiye of Article 6§§1-3 of the Charter.

With respect to Article 6§4, the Committee encourages the Government to consider acceptance of this provision while taking further steps to align the domestic legislation to the requirements of the Charter, for instance concerning the total absence of a right to strike for all civil servants.

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

Signatures, ratifications and accepted provisions

Türkiye 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.

Türkiye 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.

Türkiye 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 and non-accepted provisions by Türkiye

Grey = 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										

Meetings and reports on non-accepted provisions

- First report on the non-accepted provisions of the European Social Charter, 2013
- Second report on the non-accepted provisions of the European Social Charter, 201

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.