

## — Turkey and 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 [reports concerning Turkey](#) in 2013, 2018 and 2022. The Committee considers that there are no obstacles to the immediate acceptance of Articles 5 and 6§§1-3.

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

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Turkey

Between 1989 and 2023, Turkey has submitted 15 reports on the application of the 1961 Charter and 15 reports on the application of the Revised Charter.

The [14<sup>th</sup> report](#), submitted on 15/04/2022, concerns the accepted provisions relating to thematic group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29).

Conclusions with respect to these provisions have been published in March 2023.

The [15<sup>th</sup> report](#), which was submitted on 30/03/2023, covers the accepted provisions of the Social Charter relating to thematic group 4 "Health, social security and social protection", namely:

- the right of children and young persons to protection (Article 7);
- the right of employed women to protection of maternity (Article 8);
- the right of the family to social, legal and economic protection (Article 16);
- the right of children and young persons to social, legal and economic protection (Article 17);
- the right of migrant workers and their families to protection and assistance (Article 19);
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27);
- the right to housing (Article 31).

Conclusions with respect to these provisions will be published in March 2024.

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<sup>1</sup> 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](#).

<sup>2</sup> 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 <sup>3</sup>

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2020

► *Article 152 – Right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

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

► *Article 1054 – 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 1055 – Right to vocational training - Full use of facilities available*

It has not been established that equal treatment of nationals of other States Parties residing or working lawfully in Turkey is guaranteed as regards financial assistance for vocational education and training.

► *Article 1551 - 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 children with disabilities to mainstream education is effectively guaranteed.

► *Article 1552 - 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 the obligation to provide reasonable accommodation is guaranteed.

► *Article 1553 - 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 1853 – 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.

► *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 obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

► *Article 24 – Right to protection in case of dismissal*

The amount of compensation that a worker can receive in case of unlawful dismissal is not adequate.

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

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

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<sup>3</sup> 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 2021**

► *Article 353 – Right to safe and healthy working conditions - enforcement of safety and health regulations*

- Accidents at work and occupational diseases are not monitored effectively;
- The labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

► *Article 354 - Right to safe and healthy working conditions - Occupational health services*

It has not been established that there is a strategy to progressively provide access to occupational health services for all workers in all sectors of the economy.

► *Article 11§1 – Right to protection of health – Removal of the causes of ill-health*

- The measures taken to reduce infant and maternal mortality rates have been insufficient;
- It has not been established that the provision of healthcare is not subject to long waiting times.

► *Article 13§1 – Right to social and medical assistance – adequate assistance for every person in need*

The level of social assistance paid to a single person without resources is not adequate.

► *Article 14§1 – Right to social welfare services – promotion or provision of social welfare services*

It has not been established that:

- there is an adequate number of staff providing social services;
- effective and equal access to social services is guaranteed to nationals of all other States Parties.

► *Article 14§2 – 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 social services were adequate;
- the services managed by the private sector are effective and accessible to all, without discrimination.

► *Article 23 – Right of the elderly to social protection*

The basic assistance granted to older persons not entitled to a pension is manifestly inadequate.

► *Article 30 – Right to be protected against poverty and social exclusion*

There is no adequate overall and coordinated approach in place to combat poverty and social exclusion.

### **Thematic Group 3 "Labour rights" - Conclusions 2022**

► *Article 2§1 – Right to just conditions of work– Reasonable working time*

The maximum weekly working time can exceed 60 hours in flexible working time arrangements.

► *Article 4§2 – Right to a fair remuneration – Increased remuneration for overtime work*

Civil servants are not entitled to increased time off in lieu of remuneration for overtime hours.

► *Article 4§3 - Right to a fair remuneration - Non-discrimination between women and men with respect to remuneration*

It has not been established that the principle of pay transparency is guaranteed in practice.

► *Article 4§4 – Right to a fair remuneration – reasonable notice of termination of employment*

There is no notice period for workers on probation.

► *Article 21 - Right of workers to be informed and consulted*

The material scope of right of information and consultation under the legal framework does not cover information with regard to the economic and financial situation of the undertaking.

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

It has not been established that the right of workers to take part in the determination and improvement of working conditions and working environment is adequately guaranteed in law and practice.

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

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

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

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

**Thematic Group 4 "Children, families, migrants" - Conclusions 2019**

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

- It has not been established that work done at home by children under the age of 15 is effectively monitored;
- The prohibition of employment under the age of 15 is not guaranteed in practice.

► *Article 7§2 - Right of children and young persons to protection - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

The prohibition of employment under the age of 18 for dangerous or unhealthy activities 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 – Working time*

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§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;
- That not all acts of sexual exploitation of children under the age of 18 years are criminalised.

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

The amount of maternity benefits provided to women employed in the private sector is inadequate.

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

- The reasons of dismissal of an employee during pregnancy or maternity leave go beyond the admissible exceptions;

- It has not been established that adequate protection is provided for in cases of unlawful dismissal during pregnancy or maternity leave in the case of women employed in the public sector on temporary contracts,
- Not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave;
- It has not been established that legal remedies are available to employees on fixed-term contracts and civil servants in the case of unlawful dismissal based on pregnancy or maternity,
- Adequate compensation is not 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 women are ensured adequate protection, in law and in practice, against domestic violence;
- There is no general system of family benefits;
- It has not been established that vulnerable families receive appropriate economic protection.

► *Article 17§1 – Right of children to social and economic protection – Assistance, education and training*

- Not all forms of corporal punishment are prohibited in all settings;
- The maximum length of pre-trial detention is excessive;
- The age of criminal responsibility is too low.

► *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 adequate free assistance services and information;
- measures against misleading propaganda relating to emigration and immigration have been taken.

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

Migrant workers have no equal access in employment to professions not related to public security.

► *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;
- Social benefits are excluded from the calculation of the income of a migrant worker who has applied for family reunion.

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

- A migrant worker may be considered as a threat to public order and therefore expelled on the basis of a prosecution or conviction for any crime;
- Risk to public health in itself constitutes a ground for expulsion.

► *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 under Articles 19§1, 19§4, 19§6 and 19§8 apply also to self-employed migrants.

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

- With the exception of civil servants, fathers are not entitled 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 based on family responsibilities,
- It has not been established that adequate compensation is provided for in cases of unlawful dismissal based on family responsibilities.

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

- It has not been established that there are rules imposing obligations on landlords to ensure that the dwellings that they let are of an adequate standard;
- Measures taken to improve the substandard housing conditions of Roma and internally displaced persons are insufficient.

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

- The measures to reduce and prevent homelessness are insufficient;
- It has not been established that there is adequate legal protection for persons threatened by eviction;
- It has not been established that the right to shelter is guaranteed.

**The Committee has been unable to assess compliance with the following provisions:**

**Thematic Group 1 "Employment, training and equal opportunities"**

- ▶Article 1§1 - Conclusions 2020
- ▶Article 1§4 - Conclusions 2020
- ▶Article 10§3 - Conclusions 2020

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

- ▶Article 3§2 - Conclusions 2021
- ▶Article 11§2 - Conclusions 2021
- ▶Article 11§3 - Conclusions 2021
- ▶Article 12§1 - Conclusions 2021
- ▶Article 12§4 - Conclusions 2021

**Thematic Group 3 "Labour rights"**

- ▶Article 2§6 - Conclusions 2022
- ▶Article 4§5 - Conclusions 2022
- ▶Article 26§2 - Conclusions 2022

**Thematic Group 4 "Children, families, migrants"**

- ▶Article 7§8 - Conclusions 2019
- ▶Article 17§2 - Conclusions 2019
- ▶Article 19§2 - Conclusions 2019
- ▶Article 19§9 - Conclusions 2019
- ▶Article 19§11 - Conclusions 2019
- ▶Article 19§12 - Conclusions 2019
- ▶Article 27§1 - Conclusions 2019
- ▶Article 31§3 - Conclusions 2019

## **II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

### **Thematic Group 1 "Employment, training and equal opportunities"**

- ▶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.
- ▶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.
- ▶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.).
- ▶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.

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

- ▶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.
- ▶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).
- ▶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.
- ▶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 monthly poverty benefit (*muhtaçlık aylığı*) has been available regardless of nationality since 17 January 1997.
- ▶The "Occupational Exposure Data Package" software, prepared in 2017, aims at ensuring early detection of occupational exposures and increase occupational disease awareness.

### **Thematic Group 3 "Labour rights"**

- ▶Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as *"Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment"*. The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment.
- ▶In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the "Guideline on Psychological Harassment in Workplaces", which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment.
- ▶In order to ensure that the Covid-19 pandemic was not used as an excuse for dismissal, a temporary restriction on the termination of employment contracts by employers was introduced for all workers including trade union and workers' representatives, in the Temporary Article 10 of Labour Law No. 4857.

### **Thematic Group 4 "Children, families, migrants"**

- ▶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.

▶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.

▶The amendments introduced by Regulation No. 28566/21.02.2013 to the Regulation No. 25425 on the "Employment Procedures and Principles on Children and Young Workers", workers who have not turned 18 can not be employed in work which involve dangerous and unhealthy tasks such as: production and wholesale of alcohol, cigarettes and addictive substances; the production and wholesale of combustible, explosive, harmful and dangerous substances and their processing, storing and all sorts of work which involves exposure to such substances; work in excessive hot and cold environment.

▶Under Section 8 of the Regulation on employment of female employees at night-work of 24 July 2013 (Official Gazette No. 28717), female employees cannot perform night work during their pregnancy, upon presentation of a medical certificate.

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

▶Under Act No. 6663 which entered into force on 10 February 2016, workers with family responsibilities (public and private sectors) may work part-time until their child reaches compulsory school age. Requests to work part-time may not be regarded as valid grounds for termination of employment contracts.