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European Social Charter (revised)

European Committee of Social Rights

Conclusions 2011

(TURKEY)

Articles 7, 8, 16, 17, 19, 27 and 31
of the Revised Charter

This text may be subject to editorial revision.

Introduction

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.[1]

The Revised European Social Charter was ratified by Turkey on 27 June 2007. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2010 and Turkey submitted it on 25 February 2011.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social 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 opportunity and treatment (Article 27),
- the right to housing (Article 31).

Turkey has accepted all the Articles from this group.

The reference period was 1 January 2003 to 31 December 2009.

The present chapter on Turkey concerns 36 situations and contains:

- 6 conclusions of conformity: Articles 7§7, 8§3, 8§4, 19§2, 19§3 and 19§9;
- 20 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§8, 7§10, 8§1, 8§2, 8§5; 16; 17§1, 17§2, 19§1, 19§4, 19§6, 19§8, 19§10, 27§2, 31§1 and 31§2.

In respect of the other 10 situations concerning Articles 7§§5, 6, and 9, 19§§5, 7, 11 and 12, 27§§1 and 3, as well as 31§3 the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Turkish report deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

- the right to work (Article1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 October 2011.

[1] *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee recalls that, in application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years.

The report states that the right of children and young persons to protection is in principle guaranteed by the Constitution. Article 50 of the Constitution states: “No one shall be required to perform work unsuited to his age, sex and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.”

According to Section 71 of Labour Act No. 4857 of 10 June 2003, employment of children under 15 is prohibited; however, children who have reached the age of 14 and completed their primary education may be employed in light work which does not hinder their physical, mental and moral development and education of those who attend school.

According to the Regulations on Procedures and Principles of the Employment of Children and Young Workers of 6 April 2004, issued pursuant to the Labour Act, “young worker” means a person who has reached the age of 15 and is still under 18, and “child worker” means a child who has reached the age of 14 and is yet under 15 and completed the compulsory primary education.

The Committee recalls that the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee asks whether there are any exceptions as to certain economic sectors or economic activity as described above, and if so, which sectors and forms of economic activities they are.

The Committee recalls that Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those that are not. Work considered to be light ceases to be so if it is performed for an excessive duration.

The report states that the above-mentioned Regulations defines the types of work in which the employment of children and young workers under 18 is prohibited, the types of work in which young workers over 15 are allowed to be employed, the types of light work in which the children who have reached the age of 14 and completed the compulsory primary education can be employed as well as procedures and principles of their working conditions. Furthermore, the Annex of the Regulations indicates the types of work in which the children and young workers can be employed. In order to assess the adequacy of the work allowed for children and young workers, the Committee asks that the next report provide the relevant provisions of the Regulations as well as a copy of the Annex in one of the official languages.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect. The Committee takes note of the activity of the Labour Inspectorate. In 2004 there were a total of 54 443 inspections carried out, in 2005, 62 369; in 2006, 61 113; in 2007, 69 544; in 2008, 62 565 and in 2009, 56 095 inspections, during which the minimum age set by legislation for children and young workers in the workplace have been checked. The inspections have identified 2 266 apprentices and 1 200 children working in the inspected enterprises in 2004, 3 807 apprentices and 1 604 children in 2005, 2 904 apprentices and 2 697 children in 2006, 3 144 apprentices and 634 children in 2007, 1 936 apprentices and 624 children in 2008, 740 apprentices and 465 children in 2009 and a total of 6 620 young workers.

The Committee asks whether, according to the findings of the Labour Inspectorate, children were employed in types of work other than light work. It asks that the next report contain information on the violations found and what sanctions are applied in cases of violation.

The Committee recalls that regarding work done at home, States are required to monitor the conditions under which it is performed in practice and it asks in this respect that next report provides information regarding the monitoring of work done at home.

The Committee takes note of the efforts of the Government to eradicate and prevent child labour under several initiatives such as those under the 9th Development Plan and the Time Bound National Policy Framework and Programme for the Elimination of Child Labour and their objectives and activities, as described in the report.

The Committee takes note of the statistics on child labour provided by the Turkish Statistical Institute. It notes that a survey carried out in 2006 indicated a decline in the ratio of children working in economic activities in comparison with previous data. The proportion of working children within the age group 6-17 was 15.2 % and dropped to 10,3% in 1994 and to 5.9% (in total 958 000 persons) in 2006. The number of working children within 6-14 age group was 320 000, constituting 2.6% of total population in the said age group. The proportion of child labour in agricultural sector in rural areas had declined to 50 % in 2006 compared to 1999.

The Committee notes from another source[1] that in 2006, 5.9% of all children aged between 6 and 17 were employed in some form of economic activity. This represented over 900 000 children. One third were in the 6-14 age group and the remainder aged 15-17. Just under half worked as unpaid labourers in family enterprises. About 40% were working in agriculture. Girls accounted for about a quarter of children working in urban areas and 40% in rural areas. 39% of working 6-14 year-olds were not attending school.

The Committee considers that the employment of children under the age of 15 remains a considerable problem in Turkey and that further efforts are required to bring the situation into conformity with the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 is not guaranteed in practice.

[1] *http://www.unicef.org.tr/en/content/detail/72/child-labour-2.html*

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

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

The Committee recalls that, in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.

However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements.

The report states that according to Section 85 of Labour Ac No. 4857 of 10 June 2003, the employment of children or young workers under 16, as well as the workers who have not undergone vocational training on the specific job they perform, in arduous and dangerous occupations is prohibited. The Regulations on Arduous and Dangerous Works, issued pursuant to the Labour Law, indicate which types of occupations will be regarded as dangerous and unhealthy, what type of arduous and dangerous work may be performed by young workers between 16 and 18 as well as the work that may be performed by female workers.

The Committee notes that the general prohibition of dangerous work is set at the age of 16 with certain further prohibitions for the workers between 16 and 18 and for young female workers. This situation is not in conformity with Article 7§2 of the Charter because the age set by legislation for prohibition of dangerous or unhealthy work is below the age of 18.

In order to assess the situation regarding the forms of work allowed for young workers, the Committee asks that next report provide the relevant provisions of the regulations, containing the forms of work considered dangerous or unhealthy and the categories of ages which are allowed to participate in these forms of work, in one of the official languages.

The Appendix to Article 7§2 permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Committee asks that the next report provide information on the regulatory framework and how is supervision of such cases ensured.

The Committee takes note of the programmes and projects that have been carried out with the aim of preventing children and young workers from being employed in dangerous and unhealthy occupations, as described in the report.

The Committee takes note of the statistics on child labour provided by the Turkish Statistical Institute. The report, without specifying in which period, states that the inspections carried out by Labour Inspectorate have revealed that 2 302 children have been employed in the furniture industry and 6 709 children have been employed in the car repair/maintenance, shoe-repair and textile industry. The report states that according to national legislation employers who employ workers under 16 in dangerous and unhealthy jobs are punished by fines. The Committee wishes to know whether a ceiling level exists for the fines applied and, if so, what is the maximum of fines applied.

The Committee considers that the number of children employed in the above-mentioned economic sectors is high.

The Committee notes also from another source[1] that in Turkey, children are engaged in the worst forms of child labor, most often in the agriculture and forestry sectors, producing cotton and cut logs. They often work long hours and are involved in activities such as using potentially dangerous machinery and tools, carrying heavy loads, and applying harmful pesticides. According to Government reports, children are also exploited in street work. As of December 2009, 8 298 children were found to be working on the streets. There were reports of parents forcing their children to shine shoes, sell

tissues and food, and beg. Children working on the streets may be exposed to severe weather, accidents caused by proximity to vehicles, and vulnerability to criminal elements. Children also work in small-scale carpentry and manufacturing and boys are often employed in auto repair shops.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§2 of the Charter on the grounds that:

- the minimum age of admission to employment in occupations regarded as dangerous or unhealthy is below 18 years;
- the situation in practice does not ensure the effective protection against employment under the age of 18 for dangerous or unhealthy activities.

[1] *US Department of State Report on the Worst Forms of Child Labor 2009: http://www.dol.gov/ilab/programs/ocft/pdf/2009OCFTreport.pdf*

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of children subject to compulsory education

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

In its previous conclusion the Committee found the situation in Turkey not to be in conformity with Article 7§3 of the Charter on the grounds that children subject to compulsory schooling may be employed in certain sectors of the economy and that Turkish law does not ensure that they are not deprived of the full benefit of compulsory education.

It notes that according to Section 59 of Primary Education Act No. 222, children who are at the age of compulsory primary education but not attending it, cannot be employed in paid or unpaid work in either public or private workplaces or any other place which involves labour. Children attending compulsory primary education can only be employed in accordance with the provisions of the legislation concerning the employment of children.

The Committee examined in detail the employment of children attending compulsory education in its last conclusion. The report does not inform of any changes and the Committee refers to its previous findings and renews its conclusion of non-conformity.

The Committee takes note of the statistics provided by the Turkish Institute of Statistics. It notes that in 2006, 5.9% of 16 264 000 children in 6-17 age group worked in an economic activity. Regarding the working children in the 6-17 age group, 47.7% of them lived in urban areas and 52.4% of them lived in rural areas while 66% were males and 34% were females. 31.5% of working children attended school while 68.5% discontinued their education. 2.2% of children who attended school worked in an economic activity whereas 26.3% of children who discontinued their education were employed. While 40.9% (392 000 persons) and 59.1% (566 000 persons) of working children were employed in agricultural sector and non-agricultural sector respectively, 53% of them were salaried workers, 43.8% were non-salaried family workers and 2.7% were self-employed or employers.

The Committee notes that the school attendance rate has increased from 90.21% in school year 2003-2004, to 96.49% in school year 2008-2009. The Committee notes that efforts have been made to combat child labour and to enable access to education for children in difficult socio-economic situation. It wishes to be kept informed on the development of relevant measures in future reports.

In the meantime, the Committee considers that the situation is still not in conformity with Article 7§3.

As regards work during school holidays, the Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It asks the next report to indicate whether the situation in Turkey

complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§3 of the Charter on the ground that Turkish law and practice do not ensure that children are not deprived of the full benefit of compulsory education.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time for young persons under 18

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

In its last conclusion the Committee found the situation not to be in conformity with Article 7§4 of the Charter because, under Section 71 of Labour Act No. 4857, children under 16 might work up to 45 hours per week.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article.

The report states that in accordance with the Section 6 of the Regulations on Procedures and Principles of the Employment of Child and Young Workers, issued pursuant to the Labour Act, children under 15 who have completed their compulsory primary education and do not attend school anymore may work for a maximum of 7 hours a day and 35 hours a week. These limits may be raised to 8 hours a day and 40 hours a week with regard to the children who have reached the age of 15. The work time is applied in such a way as to ensure that for each 24-hour period, children and young workers are entitled to a minimum rest period of 14 consecutive hours.

During school term children may work up to 2 hours per day and 10 hours per week for children attending school. A 30-minute break is given for work that lasts between 2 and 4 hours, and a 1-hour break is given for work that lasts between 4 and 7 and a half hours.

The Committee considers that the working time for children of 15 years of age or below is manifestly excessive and therefore not in conformity with Article 7§4 of the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§4 of the Charter on the ground that the working time for children in manifestly excessive.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

The Committee recalls that, in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. The “fair” or “appropriate” character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged 18 or above).

Young workers

The report states that young workers receive the full minimum wage provided for by the legislation.

The Committee notes from the information provided that, in the second semester of 2009, the minimum net wage for workers under 16 stood at 86.6% of the minimum net wage of workers above 16, who, according to the report, receive the full minimum wage of an adult.

The Committee considers that the situation is in conformity with the Charter.

Apprentices

The report states that pursuant to Section 25 of Vocational Education Act No. 3308, the allowance of the apprentice is fixed by the contract, principles of which are determined by the Ministry of National Education, signed between the parent or guardian or custodian of the student or the student if he/she has reached the age of consent (18 in Turkish legislation) and the employer. For the students who carry out their vocational training in the workplaces, the allowance of the apprentice is fixed by the contract signed between the school administration and the employer. The amount of allowance cannot be less than 30 % of the minimum wage.

The report states that with a view to making the legal framework clearer, a Bill was prepared and presented by the Prime Ministry to the Turkish Grand National Assembly on 29 November 2010. Section 54 of the Bill introduces an amendment to Section 25 of the above-mentioned Act and envisages that the allowance of an apprentice cannot be less than 30% of the net amount of the minimum wage. The Committee takes note of this information. It observes that this development falls outside of the reference period and asks the next report to provide updated information on the adoption and enforcement of the future Act.

However, the report does not provide any evidence that, in practice apprentices receive at least one third of the adult minimum or starting wage at the beginning of the apprenticeship. It also contains no information that the allowance increases at least two thirds towards the end. The Committee asks what the situation is in this regard.

The Committee takes note of the activity of the Labour Inspectorate. It asks for information on the fines imposed for remuneration related offences and in particular whether a ceiling level is applied for the fines and, if so, what is the maximum of the fines applied.

The Committee defers its conclusion under this point.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The report states that, according to Section 7 of the Regulations on Procedures and Principles of the Employment of Child and Young Workers, the following situations are considered part of working time:

- time spent in training that must be provided by the employer;
- time spent in courses or meetings that take place outside the workplace and as well as in occupational courses provided by the authorised institutions;
- time during which young workers cannot perform their work due to their taking part as delegates to committees, congresses, conferences, and similar events organized by national or international institutions in regard to working children and youngsters.

In accordance with Vocational Education Act No. 3308, apprentices undergo training of a general and vocational nature at least 8 hours a week. In order to attend such training the apprentices must be granted paid leaves.

In its last conclusion, the Committee found the situation in Turkey not to be in conformity with Article 7§6 of the Charter on the ground of a repeated lack of information demonstrating that time spent by young workers on vocational training is considered as working time and that this right applies to at least 80% of young workers receiving training.

In reply, the report emphasises that the time spent by apprentices and young workers during the vocational training is reckoned as working time by the Turkish legislation and it states that the numbers of apprentices and young workers who benefit of the trainings and have not been prejudiced as regards their remunerations will be given once compiled. The Committee has not received any further information in this regard and asks that next report include this information.

The Committee notes the activity of the Labour Inspectorate. It asks for information on the fines imposed for remuneration related offences and in particular whether a ceiling level is applied for the fines and, if so, what is the maximum of the fines applied.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that, in application of Article 7§7, young persons under 18 years of age must be given at least four weeks' annual holiday with pay.

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays they should have the possibility to take the unused leave at another time.

The report states that in accordance with the Section 10 of the Regulations on Procedures and Principles of the Employment of Child and Young Workers, issued pursuant to Section 53 of Labour Act No. 4857, the paid annual leave that shall be granted to children and young workers cannot be less than 20 days.

The report states that it is "conditional to enjoy the paid annual leave uninterruptedly". The Committee understands that the full paid annual leave is granted uninterruptedly upon certain conditions. It asks next report to confirm whether this understanding is correct and it asks whether in the event of illness or accident during the holidays, young workers have the possibility to take the leave lost at some other time.

The report states further that the paid annual leave is granted to children and young workers, subject to compulsory full-time schooling, coinciding with the school holidays or the time when they do not attend courses or other educational programs. Section 26 of Vocational Education Act No. 3308 envisages that students of vocational education shall be granted a one month leave coinciding with the school holiday. Following consultation with the school administration, upon a justified request, the student may be granted an unpaid leave of up to one month.

The Committee takes note of the activity of the Labour Inspectorate. It asks for information on the fines imposed for remuneration related offences and in particular whether a ceiling level is applied for the fines and, if so, what is the maximum of the fines applied.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Turkey is in conformity with Article 7§7 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

In its last conclusion, the Committee found the situation in Turkey not to be in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

The report states that Section 73 of Labour Act No. 4857 stipulates that children and young workers under 18 must not be employed in industrial workplaces. According to Section 12 of Duty and Powers of the Police Act No. 2559 children and young workers under 18 must not be employed in workplaces open to public where “entertainment and game play” take place or restaurants where alcoholic beverages are served.

The report does not contain any other information as to other sectors of employment and the relevant regulations of night work for young workers.

In view of the lack of information as to prohibition of night work for young workers and in so far as no change to the situation has been demonstrated, the Committee reiterates its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

In its last conclusion, the Committee found the situation in Turkey not to be in conformity with Article 7§9 of the Charter on the ground that the provisions of the Labour Act on compulsory regular examinations of young workers only apply to young workers employed in the industrial sector.

The report states that Section 87 of Labour Act No. 4857 stipulates that, prior to recruitment, children and young workers between 14 and 18 must undergo an obligatory medical examination, and have it certified by medical health reports that they are physically fit with regard to the qualifications and conditions of work. They must undergo regular check-ups every 6 months until they reach the age of 18.

The Committee asks that next report provide information whether there are any exemptions to any categories of young workers regarding the medical examination requirement.

The Committee notes that according to Section 5 of the Regulations on Arduous and Dangerous Work of 16 June 2004, it is obligatory that all workers, including women who will be employed in arduous and dangerous work and the young workers who have attained the age of 16 and are yet under 18, prior to their recruitment, certified by a medical report which depends on physical examinations and laboratory tests, indicating that they are physically fit with regard to the qualifications and conditions of work. Workers who have not undergone the required medical examinations and do not hold medical health reports cannot be employed in arduous and dangerous work. Regular check-ups are obligatory every 6 months for young workers above 16 years of age.

The Committee asks whether the scope of the Regulations includes all categories of workers, including, among others, agriculture or family businesses.

The Committee takes note of the activity of the Labour Inspectorate. It asks for information on the fines imposed for remuneration related offences and in particular whether a ceiling level is applied for the fines and, if so, what is the maximum of the fines applied.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

In order to guarantee the right provided by Article 7§10, States Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The following are minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking in children.

The Committee notes from the 2006 Concluding Observations of the UN Committee on the Rights of the Child (CRC) that the 2005 amendments to the Turkish Criminal Code provide for, inter alia, more effective sanctions with respect to crimes related to the sale of children, child prostitution and child pornography. The Committee further notes that Turkey signed, but not yet ratified, the Council of Europe Convention on Action against Trafficking in Human Beings (in March 2009) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (in October 2007).

According to the report, Article 77 of the Criminal Code (CC) provides a general prohibition of sexual exploitation of children, under the penalty of 8 years' imprisonment. Article 227 of the CC prohibits prostitution of children; a person convicted of encouraging or facilitating child prostitution can receive a sentence from 4 to 10 years' imprisonment. The exploitation of children for the purpose of pornography is forbidden under Article 226 of CC, as well as its production, storage, distribution, broadcasting or publication. The Committee asks whether legislation criminalises the simple possession of child pornography.

The law also prohibits all forms of trafficking in persons; however, the Committee notes from other sources[1] that persons were trafficked to and within the country for sexual exploitation and labour, and children were trafficked mainly for sexual exploitation.

The Government provides no information regarding the implementation of the relevant legislation. Likewise, there is no information in the report concerning the incidence of sexual exploitation of

children and trafficking in children, the measures taken to address these forms of sexual exploitation of children, or existence of any national policy in this regard.

In this connection the Committee notes from the above-mentioned sources that there has been some progress in combating human trafficking. In particular, the Ministry of Justice through local bar associations provided free legal services to foreign victims choosing to remain in the country and to testify against traffickers. Foreign victims identified by authorities may apply for humanitarian visas to remain in the country for up to six months and may then apply for renewal for another six months. The Government began a new international anti-trafficking public awareness campaign with Russia and Moldova that used television and radio advertisements to promote trafficking awareness and the trafficking-victim hotline operated by the International Organisation for Migration. However, sustainable funding for the two centres for victims of trafficking in Ankara and Istanbul, which are managed by civil society organisations, is not guaranteed.

The report mentions that as a result of “The Project on the Institutional Capacity Raising on Fight against Human Trafficking”, completed in July 2007 in coordination with the Ministry of Interior, the Second National Action Plan was prepared, with the aim of reaching international standards to eliminate human trafficking in Turkey. However, the Committee notes from the European Union (EU) *Turkey 2009 Progress Report* that the adoption of the Action Plan has been pending for two years. Therefore, the Committee assumes that there is currently no action plan addressing the problem of trafficking, in particular of trafficking in children.

The Committee further notes from the same source that in 2008 a total of 253 traffickers were arrested and 120 victims identified, while as of August 2009, 258 traffickers have been arrested and 67 victims identified. Following the 2005 amendment of the CC, the number of prosecutions against traffickers continued to increase, but, according to the available official statistics, there has been a decrease in identification and referral of trafficked persons to protection and support mechanisms. Furthermore, although the institutional capacity to combat human trafficking was further strengthened, in particular by means of training for judges, prosecutors and law enforcement officers, and the National Task Force on Combating Human Trafficking, coordinated by the Ministry of Foreign Affairs (MoFA), continued to meet regularly, according to the EU *Turkey 2009 Progress Report* the task force's structure and powers are insufficient and a coherent statistical system for monitoring human trafficking is not available. According to the European Commission,Turkey also needs to step up efforts on the prevention side and as regards the protection of victims of trafficking.

The Committee recalls that the gathering and analysis of statistical data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy aiming at protection of particularly vulnerable groups or at reducing a particular phenomenon (see, *mutatis mutandis*, European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23; ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27; Conclusions 2005, France, Article 31§2). Similarly, to effectively deal with trafficking in children, child abuse or to protect street children, States will need the necessary factual information on the extent and character of the problem in order to adopt the appropriate measures.

The Committee therefore asks how the Government monitors the scope of the problem of trafficking and sexual exploitation of children and requests the next report to provide the relevant data allowing the better assessment of the situation. In the meantime, it holds that it has not been established that sufficient measures have been adopted to protect children from trafficking and other forms of sexual exploitation.

The Committee would like to receive in the next report comprehensive and detailed information on the incidence of sexual exploitation of children and trafficking in children in Turkey, as well as on measures implemented to fight against these problems.

The Committee would also like to know whether child victims of sexual exploitation or trafficking can be prosecuted for any act connected with this exploitation and whether their psychological and social rehabilitation is ensured.

Protection against the misuse of information technologies

The Committee recalls that taking into consideration the spread of sexual exploitation of children through the means of new information technologies, Parties should under Article 7§10 adopt measures in law and in practice to protect children from their misuse.

The Committee notes from another source[2] that the Internet Act allows the Government to ban a web site if there is sufficient suspicion that the site is encouraging, inter alia, sexual abuse of children, obscenity or prostitution. Upon receiving a complaint or as a result of personal observations, a prosecutor may file an application to prohibit access to the offending site or, in an urgent situation, the prosecutor or the Telecommunication Presidency (TP) may impose a ban. In either case, a judge must rule on the matter within 24 hours. Following a judicial ban order, the Internet service provider (ISP) must block the access to the site within 24 hours. If the judge does not approve the block, the prosecutor must ensure the access is restored. The ISP may face a penalty ranging from six months' to two years' imprisonment for failing to comply with a judicial order. The law also allows individuals who believe a web site violates their personal rights to request the ISP to remove the offensive content.

Protection from other forms of exploitation

The Committee recalls that in order to be in conformity with Article 7§10 of the Charter States must prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, begging, pickpocketing or servitude, and shall take measures to prevent and assist street children.

According to the U.S. Department of Labor's 2009 report on the Worst Forms of Child Labour, as of December 2009, 8 298 children were found to be working on the streets. There were reports of parents forcing their children to shine shoes, sell tissues and food, and beg.

The Committee notes from the same source, that complaints about hazardous child labour can be made by phone to a hotline operated by the Social Services Institution or to the Website of the Prime Minister’s Office Communications Centre; according to the Prime Minister’s Social Services and Child Protection Institution, as a result of calls to this hotline, 740 parents were given notifications that they had committed a crime for making their children work in the streets. Of those, 151 were punished.

The Committee notes from the report, that the Social Services and Child Protection Institution (SHÇEK) operated 37 centres in 29 provinces to assist street children. Furthermore, a New Service Model Applied for Children Living and Employed on the Streets has been established, which aims at preventing the children from being drawn to the streets, as well as assisting the children, who are employed or live on the streets, by offering them formal education and professional training, providing shelters, health services and addiction treatment.

The Committee would like to be informed about the impact of these measures on the scale of the problem of street children. The Committee also asks for more detailed information concerning protection and rehabilitation of street children. In particular, it asks what measures have been taken to estimate, prevent and reduce this phenomenon in the best interests of these children, how are they provided protection and assistance, and whether there are any measures taken to strengthen the support and assistance available to families, both as a preventive measure and a measure conducive to the return of children to their families or other settings, as appropriate.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that sufficient measures have been adopted to protect children from trafficking and all forms of sexual exploitation.

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[1] *European Commission, Commission Staff Working Document: Turkey 2009 Progress Report, 14 October 2009, SEC(2009)1334; United States Department of State, 2009 Country Reports on Human Rights Practices - Turkey, 11 March 2010; U.S. Department of Labor, 2009 Findings on the Worst Forms of Child Labor*

[2] *United States Department of State, 2009 Country Reports on Human Rights Practices - Turkey, 11 March 2010*

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

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

The right to maternity leave

According to Civil Service Act No. 657 and Labour Act No. 4857 the length of maternity leave is 16 weeks (8 weeks before birth and 8 weeks after) during which female workers cannot be employed. Provided her health condition allows it, a female worker can work, with a doctor's consent, until three weeks before childbirth. In such cases, the period of work will be granted as additional postnatal leave. An additional two weeks are added to the 8 weeks before birth in case of multiple birth. Furthermore, the length of maternity leave may be extended on the basis of a medical report depending on the worker's health condition and the working conditions. Sections 104 and 105 of the Labour Act provides that employers who force pregnant women or women having recently given birth to work during the above-mentioned period are in breach of the Labour Act and liable to paying a fine.

The Committee notes from the report that the Press Labour Act provides for a specific regime for journalists. According to Section 16 of this Act, female employees are entitled to maternity leave from the seventh month of their pregnancy until the end of the second month following birth.

The Committee asks more specifically whether there is a six-week period of compulsory postnatal leave, including for employed women coming under the Press Labour Act. If not, it asks what legal safeguards exist to avoid any undue pressure from employers to shorten their maternity leave. It also asks whether there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asks for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave). Until it has all the relevant information, it reserves its position on the matter. Should the information requested not be provided in the next report, there will be nothing to establish that the situation is conformity on this point.

The right to maternity benefits

According to Social Insurance and Universal Health Insurance Act No. 5510, insured female workers are entitled to a daily incapacity benefit provided by the maternity and sickness insurances during the 16 weeks of maternity leave provided that they have contributed to the insurance scheme for a minimum of 90 days over a period of one year prior to birth. The amount of this benefit is 66% of the worker's earnings in the last three months.

The Committee underlines that the maternity benefit must be adequate and must be equal to the employee's salary or close to its value. It recalls that Article 8§1 requires maternity benefit to be at least equal 70% of the employee’s previous salary (Latvia, Conclusions XVII-2). Therefore, it considers that the daily incapacity benefit provided during maternity leave for women working in the private sector in accordance with the Social Insurance and Universal Health Insurance Act, which corresponds to 2/3 of their earnings, falls short of this threshold and cannot be considered adequate as it is not close enough to the amount of their earnings.

The Committee notes that the situation of journalists is governed by the Press Labour Act which provides that during maternity leave employed journalists are entitled to the payment of half their salary by their employer. The Committee asks whether this regime derogates from the normal regime applicable to employed women, whether it applies to all journalists without any distinction, and whether Press Labour Act covers other women than journalists working in the press industry. The Committee reserves its position on this issue.

As regards women employed in the public sector, they continue receiving their wage during maternity leave.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits provided to women employed in the private sector is not adequate.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal

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

Prohibition of dismissal

According to Section 18 of Labour Act No. 4857, which is entitled "justification of termination with a valid reason", an employer who terminates the open-ended contract of a worker with at least six months of seniority in an enterprise employing thirty or more workers must justify it by valid reasons. This provision contains a list of invalid reasons which includes pregnancy and maternity leave. Pursuant to this provision, reasons which are considered as valid reasons are those based on the capacity or conduct of the employee or the operational requirements of the enterprise. The Committee recalls that Article 8§2 does not lay down an absolute prohibition. Exceptions are permitted in certain cases such as serious misconduct if the undertaking ceases to operate (Conclusions 2005, Estonia). The Committee finds that the above-mentioned exceptions which are contained in Section 18 of the Labour Act are broad and therefore asks for examples of how they are applied in practice.

Section 17 of the Labour Act affords some protection against unlawful dismissals for female workers with open-ended contracts who do not fall within the category protected by Section 18. However, this provision is entitled "notice of termination" and deals in essence with the length of dismissal notices and not reasons of termination. No reference is made to possible invalid grounds for this category of workers, in particular maternity leave and pregnancy. The Committee asks for information regarding the extent of protection enjoyed by women whose open-ended contracts are with companies of less than 30 employees or who have less than six months' seniority.

The Committee notes that no reference is made on the protection of women employed on fixed-term contract. In this respect, it recalls that Article 8§2 applies equally to women on fixed-term and open-ended employment contracts (Conclusions XIII-4, Austria). While there may be exceptions if the period prescribed in the employment contract expires during pregnancy or maternity leave, the rule should be that women on fixed-term contract should also be protected against unlawful dismissal. Therefore the Committee asks what protection exists in domestic law for female workers on fixed-term contract against unlawful dismissal.

According to Civil Service Act No. 657 women employed as permanent staff enjoy job security except in situations which may justify dismissal. The Committee asks for more information on such exceptions, but also on the protection offered to women employed in the public sector on temporary contracts.

Consequences of unlawful dismissal

In the case of female workers covered by Section 18 of the Labour Act, if their employment contract is terminated on the basis of pregnancy or maternity leave, courts will consider the termination null and void (Section 20). The employer has one month to re-employ the worker concerned, failing which he will have to pay compensation equal to a minimum of four months' wage and a maximum of eight months' wage. In addition, the worker is paid the wages and other benefits that have accrued during a maximum of four months for the period she stopped being employed and the court decision.

In the case of female workers not covered by Section 18 of the Labour Act, Section 17 provides that workers will be paid compensation equal to three times their wage if their employment contract is abusively terminated. Reinstatement does not appear to be provided for these categories of workers.

No reference is made to women employed on fixed-term contract in respect of possible compensation or reinstatement in case of dismissal linked to their pregnancy or maternity leave.

The Committee underlines that reinstatement of female workers covered by Article 8§2 who have been unlawfully dismissed should be the rule (Conclusions 2005, Cyprus). Exceptionally, if this is impossible (e.g. where the enterprises closes down) or the female worker concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. The Committee notes that female workers with an open-ended contract that have worked less than six months in the same enterprise, those with an open-ended contract working in an enterprise of less than 30 employees, and those with fixed-term contracts are not entitled to reinstatement in case of unlawful dismissal which is not in compliance with Article 8§2.

Furthermore, the Committee notes that ceilings are laid down in the Labour Code on compensation that may be awarded in case of unlawful dismissal. The Committee asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

The Committee asks what regime applies to women employed in the public sector, in particular those with temporary contracts.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 8§2 of the Charter on the ground that not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

According to Section 74 of Labour Act No. 4857 and Section 104 of the Civil Service Act No. 657 female employees are granted breastfeeding breaks amounting to one and half hours per working day until their child reaches one year of age. This time can be split along the working day according to the worker's needs, and is counted as working time. The Committee asks for confirmation that breastfeeding breaks both in the private and public sectors are remunerated as part of normal working time.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

According to Section 9 of the Regulations on Working Conditions of Pregnant and Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes provides that female workers cannot be employed in night shifts from the date of their pregnancy, as certified by medical certificate, until

childbirth. Female workers who breastfeed their child are also excluded from night shifts for 6 months, with a possible one-year extension on the basis of a medical certificate. Female workers who have recently given birth should not be employed for night shifts during an eight-week period after childbirth.

The Committee notes that, as of 2011, Civil Service Act No. 657 provides that female civil servants cannot be employed for night work starting from the 24th week of pregnancy (or before that if a medical certificate supports it) up until one year after childbirth (Section 101).

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 8§4 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

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

According to Section 72 of Labour Act No. 4857 women cannot be employed in underground and underwater work including mines. In accordance with Section 85, Regulations on Arduous and Dangerous Work entered into force in 2004 in order to govern arduous and dangerous activities which cannot be carried out by women.

Insofar as the prohibition of dangerous, unhealthy and arduous work concerns specifically pregnant women, women having recently given birth or nursing their infant, the situation may be in conformity with Article 8§5.

In accordance with Section 88 of the Labour Act, Regulations on Working Conditions of Pregnant Women or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes provides a protective framework for these women in respect of arduous or dangerous activities. Among other things their working conditions need to be adapted to their state of health (e.g. making necessary arrangement when work from a certain height is carried to avoid risks of falling; adapting work where standing up for long periods is required; working in a smoke free environment; adapting working rhythm and hours; providing appropriate rest periods). Special precautions need to be taken in respect of a number of identified chemical, physical and biological actions and industrial processes:

- physical effects: (i) work involving shock or vibration are prohibited; (ii) if noise cannot be reduced below 80dB, pregnant women must be moved to another work: (iii) pregnant and breastfeeding women cannot work in places with ionized radiation sources; (iv) precautions must taken for pregnant women, women who have recently given birth and women who breastfeed their child regarding work involving non-ionized radiation; (v) such women should not be exposed to cold, hot and high pressure that may represent a risk on their health;
- biological effects: pregnant women, women who have recently given birth and breastfeeding women cannot be employed for work which involves contact with a number of biological factors listed in the Implementing Regulations for Prevention of Experiencing Risks of Biological Factors;
- chemical factors: it is prohibited to ask pregnant women, women who have recently given birth and breastfeeding women to work in production, operation and use of chemicals which can be harmful for breastfeeding their child, and which can be toxic for reproduction, in particular carcinogenic, mutagen, highly toxic, harmful and allergic substances. However, provided precautions are taken, and their health condition is closely monitored, pregnant women can be asked to manipulate toxic substances which cannot be replaced by other substances, including mutagens, and women who have recently given birth and those breastfeeding can also be asked to work with substances other than those which are harmful on breastfeeding;

- related working conditions: it is prohibited to use pregnant women and women having recently given birth for manual loading or carrying without an appropriate vehicle in a way that could be harmful on the child on their own health; adequate protective equipment must be provided, failing which the women concerned cannot be assigned to work requiring such equipment.

According to these regulations, the employer must evaluate the risks by pregnant women, women who have recently given birth and breastfeeding women and determine precautions that need to be taken. If the changes to the employee's post are not sufficient to alleviate all risks, the employer must move the employee concerned to another post whilst keeping the same wage. If this is not possible, the employees is granted unpaid leave.

The Committee underlines that if no reassignment of women who are pregnant or breastfeeding is possible, they should be entitled to paid leave (Conclusions 2003, Bulgaria). It notes that the relevant regulations dealing with reassignment only provide for unpaid leave to be granted in such situations, which falls short of the requirement of the Charter.

The Committee asks whether the same regime applies to women employed in the public sector.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 8§5 of the Charter on the ground that pregnant women, women who have recently given birth or who are breastfeeding are granted only unpaid leave when they cannot be reassigned to another post because of the dangerousness of their usual work.

Article 16 - Right of the family to social, legal and economic protection

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

As the notion of the "family" is variable according to the different definitions in domestic law, the Committee considers it necessary to know how this notion is defined with a view to verifying that it is not unduly restrictive. The Committee therefore asks that the next report indicate how the "family" is defined in domestic law.

Social protection of families

Housing for families

Turkey has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

Childcare facilities

The Committee notes that as Turkey has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

Family counseling services

Families must have access to appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counseling services and services providing psychological support for children's education. The Committee asks for up-to-date information on family counseling services to be included in the next report.

Participation of associations representing families

To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. In its previous conclusion (Conclusions XVIII-1), the Committee noted that when the Family Consultation Council is appointed, special attention is paid to the representation of different professions and parts of the population in order to reach an effective family policy. It asked to specify the membership, statute and competences of this Council. In the absence of information in the report, the Committee reiterates its question.

Legal protection of families

Rights and obligations of spouses

Since the entry into force of a new Civil Code in 2001, women have had the right to equality in marriage. Men no longer have the status of head of the family and are now on an equal footing with their wives within marriages. Each spouse has equal rights over the family dwelling and property acquired during the marriage and equal powers of representation. The minimum legal age of marriage is 18 for both women and men. The rights and obligations of spouses are set out in Articles 185 to 201 of the Civil Code.

Mediation services

A mediation bill was referred to the Turkish Grand National Assembly on 3 August 2008 and is already being discussed by the Justice Committee. The bill makes provision for a system of mediation which would facilitate the settlement of private law disputes between individuals. The Committee asks for information in the next report on the implementation of this bill.

Domestic violence against women

Under Family Protection Act No. 4320, women exposed to domestic violence may apply to the courts for a protection order, breaches of which are punishable by a prison sentence of three to six months. Under Article 232 of the Criminal Code, anyone engaging in abuse towards persons sharing the same

dwelling is liable to a prison sentence of two months to one year. Under Article 82 of the Criminal Code it is an aggravating circumstance if the victim of an intentional homicide is the offender's spouse.

The report also refers to a medium-term programme (2011-2013), one of whose aims is to take strong action to counter domestic violence against women.

According to another source[1], the UN Committee on Economic, Social and Cultural Rights expressed concern in its 2005 report about the persistence of violence against women, particularly within families. It also highlighted the following problems: women who were victims of violence often knew nothing about their rights and the legal means of protecting themselves; there were not enough support services such as women's shelters and the recently enacted Municipalities Act delegated the responsibility for setting up shelters to municipalities without providing the necessary follow-up and funding. The UN Committee also expressed concern about the prevalence of patriarchal attitudes and the persistence of traditional and cultural prejudices about the role and obligations of men and women in society, which placed women in an inferior position. It feared that these attitudes helped to perpetuate violence against women, including honor crimes. According to EU statistics[2], homicides of women increased by 1 400% between 2002 and 2009.

According to a recent European Parliament resolution[3], there were several reasons for concern about violence against women, especially domestic violence, honor crimes and crimes of tradition. Despite the legislative reforms introduced through changes to the Constitution, the Civil Code, the Criminal Code and the Labour Act, the European Parliament was concerned about the lack of progress in the application and implementation of legislation in the sphere of women's rights and the protection of women in practice, particularly with regard to violence against women.

Lastly, according to another source[4], in 2008, the 52 shelters for women victims of violence in Turkey could not cater for the needs of a population of 70 million, and even the minimal possibilities provided by the legislation in force (Municipalities Act No. 5393), namely one shelter per municipality of over 50 000 inhabitants, were not sufficiently exploited. Furthermore, the people employed by shelters did not have the necessary social, legal, psychological and medical training to help women who were victims of domestic violence.

In the light of the foregoing, the Committee considers that the situation is not in conformity as the measures taken to solve the problem of domestic violence are inadequate.

Economic protection of families

Family benefits

In its previous conclusion (Conclusions XVIII-1), the Committee considered that the situation was not in conformity with Article 16 because Turkey had no general system of family benefits: only civil servants and workers covered by collective agreements were eligible for such benefits. The Committee noted that a bill had been prepared on non-contributory benefits designed to ensure the provision of social services according to objective criteria, guarantee co-ordination and co-operation between social insurance bodies and set up a new unified structure. This bill provides for granting family benefits to families in need, beginning with children belonging to the groups most at risk. In the absence of information in the report, the Committee requests that the next report contain detailed, up-to-date information on the content, entry into force and implementation of this legislation. However, in the absence of any general system of family benefits, it finds that the situation is not in conformity with the Charter.

Vulnerable families

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families. The Committee asks what measures are taken to ensure the economic protection of Roma families.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 16 of the Charter on the grounds that:

- measures implemented to address the problem of domestic violence have not been sufficient;
- it has not been established that there is a general system of family benefits.

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[1] *CEDAW report to the General Assembly UN, 32nd session, 10-28 January 2005, CEDAW/C/TUR/CC/4-5, Final observation, §27*

[2] *http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-002373+0+DOC+XML+V0//FR*

[3] *Resolution du Parlement européen sur le rôle des femmes en Turquie dans la vie sociale, économique et politique (2004/2215(INI)), P6_TA(2005)0287*

[4] *Shadow NGO report on Turkey's Sixth periodic Report to the Committee on the Elimination of Discrimination against Women for submission to the 46th Session of CEDAW, July 2010, prepared by the Executive Committee for NGO Forum on CEDAW and Women's Platform on the Turkish Penal Code*

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

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

Status of the child

The Committee recalls that Article 17 requires that a child must, in principle, have a right to know his or her origins. The Committee asks how this right is legislated, whether there are circumstances under which the child would not be allowed to know his/her origins and what is the nature of such restrictions.

Education

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

Protection of children against ill treatment and abuse

In its previous conclusion (Conclusions XVII-2) the Committee held that the situation was not in conformity with the Charter as corporal punishment in the home was not prohibited. It notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 24, §223) that the Criminal Code was replaced by a new Criminal Code, which entered into force on 1 June, 2005. Under Article 232, paragraph 1 of the new Code, under the heading "unfair treatment", it is stipulated that any person mistreating any of the persons living in the same dwelling with him/her, shall be sentenced to a term of imprisonment ranging from two months to one year. This article also covers the children in the home. In its Article 232, paragraph 2, the new Criminal Code stipulates that a person who misuses his/her power of discipline on a person who is under his/her authority or who has been held responsible for the purpose of his/her raising, protecting or teaching him/her a profession or an art, shall be held liable for a term of imprisonment up to one year. According to the report of the Governmental Committee, this regulation shows the limits of his/her disciplinary authority and is of the nature of prohibiting corporal punishment in the home.

The Committee however notes from another source[1] that corporal punishment is lawful in the home. In 2002, the Civil Code was amended to remove parents' "right of correction", but the new Criminal Code recognizes the concept of "disciplinary power" (Article 232). Provisions against violence and abuse in the Criminal Code, the Protection of the Family Act and the Child Protection Act (2005) are not interpreted as prohibiting all corporal punishment in childrearing.

The Committee considers that the new Criminal Code does not explicitly prohibit all forms of corporal punishment of children in the home. Therefore, it holds that the situation which it has previously found not to be in conformity on this point has not changed.

According to the above-mentioned source, corporal punishment has been considered unlawful in schools since 1923, but there is no explicit prohibition and there has been some controversy as to its legal status. Act No. 1702 punishes ill-treatment and beating (articles 20 and 22). According to the representative of the Turkish Government (TS-G (2005) 24, §224), this Law is indeed the exact law which prohibits the corporal punishment of children in schools. According to the same source, Promotion, Appreciation and Punishment for Primary School Teachers Act No. 4357 (Section 7), the Promotion and Punishment for Secondary School Teachers Act (Sections 20-22 and 27) and State Personnel Act No. 657 provide for punitive measures against teachers who use physical or psychological violence against children. However, in April 2008, an investigation by the Education Ministry into the use of corporal punishment by a school principal reportedly concluded that corporal punishment has an educational value. The investigator reportedly cited an Administrative Supreme Court ruling from 1978 which supported corporal punishment by teachers, but not a 2005 ruling against it. The Committee asks the Government to provide explanation and in the meantime it reserves its position on this point.

The Committee recalls that according to its case law, to comply with Article 17 with respect to the corporal punishment of children, states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.

Children in public care

According to the report, the Social Services and Child Protection Institution (SHÇEK) is the leading organisation charged with the tasks of providing assistance to, among others, children and young people in need. The services provided by this agency are 'care in own family' where children are supported in their families through a programme launched in 2005. A total of 30 744 children were supported as of September 2010, including those who returned to their families and those who were not taken under protection. There were 1,085 foster families with 1 227 children in September 2010. They are paid for every child they take care of.

In cases where it is not possible to provide care to the family, institutional care is provided as the last option, such as nursery schools (4 131 in October 2010) and orphanages (1 726 girls and 2 880 boys in 2010). Besides, there are care and social rehabilitation centres which provide temporary care and protection for children. There were 23 centres in October 2010 sheltering 362 children. There were 211 'children shelters' which hosted 1 124 children.

The Committee recalls that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation and should not go beyond what is necessary for the protection of the best interest of the child and the rehabilitation of the family (Conclusions XV-2, Statement of Interpretation on Article 17§1). It should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

In reply to its question concerning the monitoring of care institutions and the procedure for complaining about the care and treatment in institutions, the Committee notes from the report that audits and inspections are carried out regularly at certain intervals by internal auditors under the supervision of SHÇEK Audit Board. At the stage of admission the child is provided with information on the purpose of his/her stay in the institution, principles of operation of the institution, to whom to refer in case of any need, daily life and rules to be complied with. Children may write petitions and submit them through petition and complaint boxes. They may notify the professionals and administrators about all their requests and complaints.

Young offenders

In its previous conclusion the Committee held that the situation in Turkey was not in conformity with the Charter as the age of criminal responsibility was manifestly too low (11 years) and the minimum length of certain prison sentences for minors was excessive. In this connection it notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 24, § 58) that in the new Turkish Criminal Code, which came into force on 1 June 2005, the age limit of criminal responsibility was raised to 12 years. In its Article 31, §2 the new Code stipulates that no sentence can be given to minors who at the time of the crime, were under 12 years. The Committee considers that raising the age of criminal responsibility to 12 years has brought the situation into conformity with the Charter. It asks whether minors can be held together with adults in prisons or during pre-trial detention.

With respect to persons between 15 and 18 years of age, if the offence necessitates the punishment with an aggravated heavy life sentence, such persons shall be imprisoned from 14 to 20 years, and, if the offense necessitates the punishment with a heavy life sentence, they shall be imprisoned from 9 to

12 years. Other punishments shall be reduced by half, and in such a situation, the term of imprisonment for each wrongful act shall not exceed 8 years. The Committee notes that it is still possible to impose 20 years of sentence to a minor. Therefore, it considers that the situation which it has previously held not to be in conformity with the Charter has not changed.

The Committee wished to be informed of the possibilities of education for young offenders and how this was applied in practice. It notes that young persons who have been detained as convicts in the closed prison houses benefit from reading and writing courses, and take also the full benefit of facilities provided with respect to open primary schools, supplementary courses, university entrance examinations, open university and vocational training courses.

At the end of their trial, children, if sentenced to imprisonment, are placed in one of the Children Education Houses. Education given in the closed institutions is also provided in these houses. Children of appropriate age and meeting the necessary requirements have the opportunity of attending school and also of participating in such courses as foreign language, computer, university preparation and vocational training, as well as of enjoying such social activities like theatre, cinema, concerts and sports tournaments.

The Committee reiterates it question concerning the maximum length of pre-trial detention and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee also asks whether young offenders have a statutory right to education.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 17§1 of the Charter on the grounds that:

- there is no explicit prohibition of corporal punishment in the home;
- prison sentences for minors may be up to 20 years.

[1] *http://www.endcorporalpunishment.org/pages/frame.html*

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 2 - Free primary and secondary education - regular attendance at school

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

The Committee notes that compulsory education covers children in the 6-14 age group. Primary Education Act No. 222 stipulates that compulsory education institutions include primary schools and supplementary classes and courses. Every guardian or head of family is obliged to ensure regular attendance of the student to the primary education. Civil authorities, primary education inspectors and city police are obliged to ensure that children in the respective age group are enrolled with the primary education institutions.

According to UNICEF[1], the gross primary school enrolment rate stood at 101% for males and 98% for females. The Committee takes note of measures implemented with a view to encouraging school attendance and fighting absenteeism, in cooperation with international organisations, such as UNICEF. The Committee notes an initiative entitled "determining the reasons for failure to timely enrol in primary education in the most problematic regions and provinces". Besides, the situation and needs analysis was carried out concerning school dropout and absenteeism, at the end of which functional definitions of absenteeism were made and action plans were developed. Besides, a "remedial education project" is being carried out with the support of UNICEF, aiming at integrating the children in the 10-14 age group who have never enrolled with or dropped out from school. Various educational supports are provided in order to encourage school attendance of children from poor families. A guide

was prepared for education inspectors for monitoring access and attendance in order to ensure that primary education strategies and policies are communicated to school administrators and with a view to raising awareness as to the right to education and gender equality, school culture, the changing role of parents etc. According to the report, the total number of drop-outs in the primary education was 144 970. The Committee asks what measures are taken to reduce the number of drop-outs.

There were 32 431 public and 897 private primary schools, 8 182 public and 731 private secondary schools. Average class size was 32 in primary and 33 in secondary schools. There were 22 students per teacher in primary and 18 in secondary schools.

The Committee recalls that Article 17§2 of the Charter requires that equal access to education must be guaranteed for all children, with a particular attention to vulnerable groups, such as children from minorities, children seeking asylum, children in young offender institutions. Whenever necessary, special measures should be undertaken to ensure equal access to education for these children. However, special measures for Roma children must not involve the establishment of separate/segregate schooling facilities. The Committee asks how access to education is guaranteed to vulnerable groups such as Roma and what are the enrolment and drop out rates for this group.

The Committee takes note of the letter addressed by the Commissioner for Human Rights of the Council of Europe to the Minister of National Education[2] where the Commissioner expresses his concern about the requirement, under Circular No 2010/48 of 16 August 2010, according to which the children or their legal guardians must have a work or residence permit to have effective access to education. This requirement, in the Commissioner's view, hinders the provision of education to children in irregular situation. The Commissioner further expresses his concern about Private Education Institutions Act No. 5580, which regulates the schools for religious minorities and limits attendance of these schools to members of minorities with Turkish nationality, leaving the children of irregular migrant families with no access to these schools.

As regards the issue as to whether children unlawfully present in the territory of the State Party are included in the personal scope of the Charter within the meaning of its Appendix, the Committee refers to the reasoning it has applied in Defence for Children International (DCI) v. the Netherlands (Complaint No. 47/2008, decision on the merits of 20 October 2009, *inter alia*, §§ 47 and 48) and holds that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child's life would be adversely affected by the denial of access to education. The Committee holds that States Parties are required, under Article 17§2 of the Charter to ensure that children unlawfully present in their territory have effective access to education as any other child.

As the Turkish legislation limits access to education only to holders of residence permit or to Turkish nationals belonging to minority groups, the Committee holds that it is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 17§2 of the Charter as children unlawfully present in its territory do not have effective access to education.

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[1] *http://www.unicef.org/infobycountry/*

[2] *https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1853101&SecMode=1&DocId=1728644&Usage=2*

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

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

Migration trends

Throughout history, Turkey has known diverse forms of migratory movements and refugee flows. Traditionally, Turkey has been a country of emigration (in 2005, the percentage was 6% of the total population) with large numbers of its nationals migrating to Western Europe, particularly Germany since the 1970s. Europe's oil recession in the 1970s redirected the flow of the Turkish migrant labour force to the Middle East, and in the 1990s to the Russian Federation and Commonwealth of Independent States. As a result of emigration, remittance flows have been an important input to the country's economy since the 1960s. Turkey has also long been a country of destination for migrants, either economic migrants or refugees or asylum seekers (in 2005, the percentage was 1.8% of the total population). It has recently emerged as a destination for migrants from Eastern Europe and the former Soviet Union, as these new migrants envisage Turkey as a gateway to a new job, a new life, and a stepping stone to employment in the West. Migration issues in Turkey are shaped by its efforts to become a member of the European Union (EU), which are creating pressures for an overhaul of its immigration and asylum policies[1].

Change in policy and the legal framework

In line with Turkey's aspirations to join the EU and its candidacy status, the Turkish Government is taking up efforts to align its migration policies with the migration-related EU acquis and policies. The accession partnership document outlines the changes necessary in terms of management of migration.The National Action Plan on the implementation of the Integrated Border Management strategy was accepted in 2006 in Turkey and can be considered as the preliminary step forward in line with the EU accession process. Meanwhile, there is a need for the enhancement of administrative capacity for the harmonization and implementation of the acquis. A Task Force for the "National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration" bringing together officials from relevant ministries and organizations was established in 2004. The Task Force convened in November and December 2004 and drafted the Action Plan, which was endorsed by the Prime Minister in March 2005. The Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration includes the legislation, the development projects complementing the administrative structure, and the physical infrastructure relating to Turkey's asylum, emigration, and immigration system that should be harmonized with the EU acquis and policy[2].

Free services and information for migrant workers

In its previous conclusion (Conclusions XVIII-1), with respect to information services, the Committee asked where the information could be found in the languages comprehensible to migrant workers entering Turkey. According to the report, the information on employment of foreigners is published on the website of the Ministry of Labour and Social Security (www.csgb.gov.tr) in 5 languages (Turkish, English, Russian, Arabic and Chinese). It is pointed out that in this framework accurate information for foreigners who will work in Turkey are provided. The Committee observes that the information available on the homepage of the above-mentioned website appear to be in Turkish language exclusively. The report does not provide any other information on free services and information for migrant workers.

The Committee considers that it has not been established that free services are provided to assist migrant workers in obtaining accurate information. In this respect, the Committee recalls that "Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination, such as vocational guidance and training, social security, trade union membership, housing, social services, education and health." (Conclusions III, Cyprus).

Measures against misleading propaganda relating to emigration and immigration

In its previous conclusions, the Committee requested specific information on the measures used to combat common forms of misleading propaganda, such as encouraging illegal immigrants to travel to Turkey. Furthermore, the Committee observed that the report did not provide any information on the measures taken against racist and xenophobic propaganda. The report does not provide the requested information.

The Committee considers that it has not been established that measures against misleading propaganda relating to emigration and immigration have been taken, as an implementation of Article 19§1 of the Charter. In this respect, the Committee recalls that "(...) such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter." (Conclusions XIV-1, Greece). "To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants" (Conclusion XV-1, Austria).

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§1 of the Charter on the grounds that:

- it has not been established that free services are provided to migrant workers, particularly in obtaining accurate information;
- it has not been established that measures against misleading propaganda relating to emigration and immigration have been taken.

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[1] *Migration in Turkey, a country profile 2008 - International Organization for Migration*
[2] *Ibidem*

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

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

On the basis of the information contained in the Turkish report and earlier reports, the Committee notes that there have been no changes to the situation regarding measures to facilitate the departure, travel and reception of migrant workers, which it previously found to be in conformity with Article 19§2.

It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 19§2 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration States

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

The report provides information on the "National Asylum and Immigration Action Plan" and the "Project of Technical co-operation in the field of migration" implemented, respectively, in 2005 and 2007, in the framework of the country's accession process to the European Union. According to the report, a number of academic research programmes in the field of migration have also been started. Some of these programmes include co-operation activities at international level. Other co-operation activities in the same field are implemented by Turkish competent authorities in co-operation with the International Organization for Migration (IOM), the International Labour Organisation (ILO), the United Nations High Commissioner for Refugees (UNCHR) and other international bodies.

The Committee recalls that the scope of Article 19§3 "extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin" (Conclusions XIV-1, Belgium). It also recalls that: "Formal arrangements are not necessary, especially if there is little migratory movement in a given country. Common situations in which the co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed" (Conclusions XIV-1, Finland).

The report does not provide any specific, updated, information on the degree of effectiveness of the co-operation between social services of emigration and immigration States. The Committee asks that the next report provide a full and up-to-date description of the situation concerning the co-operation between social services of emigration and immigration States.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 19§3 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

Remuneration and other employment and working conditions

On the one hand, according to the report, on the basis of Labour Act No. 4857 (2003), the foreigner lawfully residing in Turkey has the same rights as Turkish citizens in terms of remuneration, working hours, paid and unpaid leaves, severance pay and dismissal notices, conclusion of a contract and its termination. On the other hand, the report states that there is no particular regulation in the national legislation concerning the working conditions of foreigners lawfully within the territory and holding a work permit; nevertheless, it is pointed out the respect of the Labour Act and other related laws is checked by inspectors with regard to all employees, without discrimination between nationals and foreigners.

Under Article 10 of the Constitution all individuals are equal before the law without discrimination based on language, race, colour, sex, political opinion, philosophical belief, religion, sect or any other similar ground. Article 5 of the Labour Act, on the “principle of equal treatment”, prohibits all discrimination on the same grounds. The Committee notes that none of the grounds listed in the law prohibits discrimination on the ground of nationality. The Committee considers that the term 'nationality' should been included in the law, indicating a ban of discrimination on this ground.

In its last conclusion on Article 1§2 (Conclusions XIX-1), regarding the prohibition of discrimination in employment, the Committee noted that Act No. 2007/1932 on trades and occupations reserved for

Turkish citizens has been repealed. However, it noted that restrictions on access to occupations including that of doctor, dentist, pharmacist, seaman, docker, ophthalmologist and veterinarian were still implemented. The Committee considered that the situation was not in conformity with Article 1§2 and reiterated its request for up-to-date information on categories of employment reserved for Turkish nationals.

The Committee recalls that "under this sub-heading, States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion (...)" (Conclusions VII, United-Kingdom) and that "States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice" (Conclusions III, Italy) and "should inform of any practical measures taken to remedy cases of discrimination. Moreover, States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers" (Conclusions I, Italy, Norway, Sweden, United-Kingdom).

The Committee asks that the next report provide up-to-date information on the legal framework securing for migrant workers treatment not less favourable than that of nationals in respect of working conditions, the measures taken to implement it as well as on the situation in practice. In particular, it asks confirmation that all restrictions on access to occupations previously reserved to Turkish nationals which are not justified by the exercise of sovereign prerogatives have been eliminated, in law and in practice.

Membership of trade unions and enjoyment of the benefits of collective bargaining

According to the report, the Constitution provides that workers and employers have the right to form labour unions and employers' associations without prior authorisation. According to the Trade Union Act, foreigners may join a trade union since there is no nationality condition in order to be a union member.

In its previous conclusion (Conclusions XVIII-1), the Committee found that the situation in Turkey was not in conformity with Article 19§4 since the rights of foreign workers to equal treatment regarding membership of trade union were not insured. In particular, the Committee found that that Section 5 of Act No. 2821/1983 provides that a worker must be a Turkish citizen in order to be a founding member of a union. In the above-mentioned conclusion, the Committee also noted that the Government indicated that the situation had been remedied through amendment to the Labour Act. However, the Committee realised that the new Labour Act does not mention any provision which gives migrant workers the right to be founding members of trade unions. It also noted that draft legislation which aims to amend Act No. 2821, was under preparation and that the draft text no longer refers to the condition of nationality. The Committee asked to be kept fully informed as to the progress made towards the adoption of the text as law.

Based on the information provided by the Turkish authorities in 2007, the Committee notes the following: the provision which limited the right of migrant workers to become a founding member of a union would be abolished by a new law on trade unions under preparation. A draft law had been submitted to social partners with a view to reaching a consensus, before submitting it to the Parliament. The report does not provide any information on any possible development in this respect.

Therefore, the Committee cannot consider that it has been established that migrant workers may become founding members of trade unions.

Accommodation

In its previous conclusion (Conclusions XVIII-1) the Committee noted that there had been no change to the situation regarding Article 19§4, sub-heading c., which it previously found to be in conformity with the 1961 Charter. The Committee notes that report does not provide updated, specific information on the measures adopted to secure for migrant workers lawfully in the territory treatment not less favourable than that of nationals in respect of housing.

The Committee recalls that "The undertaking of States under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing. There must be no legal or de facto restrictions on home–buying access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV, Norway - Conclusions III, Italy) and that "States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice" (Conclusions III, Italy) and "should inform of any practical measures taken to remedy cases of discrimination. Moreover, States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers" (Conclusions I, Italy, Norway, Sweden, United-Kingdom).

The Committee asks that the next report provide a full and up-to-date description of the situation concerning the access of migrant workers to public and private housing in terms of law and practice.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers may become founding members of trade unions.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

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

Non discrimination with regard to fiscal contributions

The report merely provides information on the national social security system. It does not provide information on the implementation of Article 19§5 of the Charter.

The Committee asks that the next report provide a full and up-to-date description allowing to establish that with regard to employment taxes, dues or contributions migrant workers lawfully within the national territory enjoy, in law and in practice, treatment which is not less favourable than that of nationals.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 6 - Family reunion

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

Scope

The Turkish legal framework does not explicitly refer to family reunion. Family reunion's issues are dealt by general legislation on residence permits, such as Travelling and Residence of Foreigners Act No. 5683 and Passports Act No. 5682, as amended in 1988. With this in mind, the Committee wishes to be informed on any administrative acts explicitly referring to family reunion (e.g. ministerial decrees, circulars, orders, etc.) and their practical implementation.

Conditions governing family reunion

With regard to health requirements, in its previous conclusion (Conclusions XVIII-1), the Committee asked information how Section 8 of the Passports Act is interpreted and applied in practice with respect to family reunion. It also asked in specific what are the contagious diseases the law refers to which would lead to a refusal of the enjoyment of the right to family reunion. Regarding mental illnesses, the Committee asked for further information on refusals based on public order or security.

The Committee observed that the information requested above was indispensable to enable it to assess in full whether the relevant legislation is interpreted in practice in the light of Article 19§6. It therefore reserved its position on this point.

The report does not provide the requested information. It merely states that the right to family reunion is not limited unless there is a serious risk to public health. In this respect, the Committee reiterates its requests. It recalls that illnesses which may justify refusal of family reunion "(...) are diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations, or other serious contagious or infectious diseases such as tuberculosis orsyphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security" (Conclusions XV-1, Finland).

The Committee asks that the next report provide detailed information on the possible length of residence required to migrant workers before their family can join them. With regard to other conditions and restrictions on family reunion, it recalls that: (a) "The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion" (Conclusions XIII-1, Netherlands). (b) "The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion" (Conclusions IV, Norway). In this respect, the Committee also considers that although the requirements of the law only in a few cases may represent an obstacle to family reunion, it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family (...). Consequently, the application of Article 19, paragraph 6 should in any case take account of the need to fulfill this obligation" (Statement of interpretation – Conclusions VIII, 1984).

Bearing in mind the foregoing, the Committee considers that the report does not provide the necessary information to conclude that the situation is in conformity with Article 19§6 of the Charter. It asks for the next report to provide up-to-date information on the legal framework regarding the conditions of family reunion as well as on any possible rejections of applications for family reunion based on the criteria relating to state of health, available means and housing.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that the requirements imposed on migrant workers, notably with respect to health, are reasonable and likely to facilitate as far as possible the reunion of their family.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

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

The report states that nationals of Contracting Parties who are the subject of bilateral and multilateral agreements benefit from legal aid. In this context the report cites several international agreements ratified by Turkey. It further states that Article 465 of the Code of Civil Procedure provides that if "persons, who are completely or partially unable to pay the necessary expenses, prove that they are right in their claims and defenses or in the application of the execution or precautionary measures may benefit from legal aid. In the second paragraph of the aforesaid Article, reciprocity was envisaged for the foreigners to benefit from legal aid". The Committee asks for further clarification of the situation.

The Committee refers to its interpretive statement in the General Introduction and asks the next report to provide full information on all the issues raised in it namely whether domestic legislation makes

provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, and whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial hearings. It recalls that the rights guaranteed in the Charter must be granted to all nationals of states parties lawfully within the territory on an equal footing with nationals, irrespective of reciprocity or bilateral agreements.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 8 - Guarantees concerning deportation

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

The Committee had previously observed that the Ministry of the Interior enjoyed considerable discretionary powers by virtue of the lack of an exhaustive list of grounds for expulsion; Section 19 of Travelling and Residence of Foreigners Act No. 5683 provides that "foreign nationals whose presence is deemed to pose a threat to State security or to conflict with political or administrative imperatives are requested by the Ministry of the Interior to leave Turkey within a fixed time period".

The Committee asked that the next report provide detailed information on the wide discretionary powers of expulsion conferred on the Ministry of the Interior, in order for the Committee to assess whether this provision is in conformity with Article 19§8 of the Charter. It furthermore asked whether decisions on expulsion due to an offence against public interest or morality take into account the aspects of behaviour or individual circumstances of the migrant worker. The Committee furthermore asked for any information on further laws or regulations applicable to expulsion.

The Committee finds that the requisite information has not been provided. It requests the next report to provide full information on how Section 19 of the Travelling and Residence of Foreigners Act is interpreted, and whether a person to be expelled may appeal against a decision to expel. It refers to its interpretative statement in the General Introduction in this respect.

The Committee finds that it has not been established that grounds for deportation of a migrant worker are in conformity with Article 19§8 of the Charter.

In addition the Committee notes from A report of the Council of Europe Human Rights Commissioner (CommDH 2009 (30) that Section 21 of the Travelling and Residence of Foreigners Act provides that "the Ministry of Internal Affairs is authorised to expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture". The Committee considers that such a provision cannot be considered as being in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with the Charter on the grounds that

- it has not been established that grounds for expulsion of a migrant worker are limited to those permitted by Article 19§8 of the Charter;
- Section 21 of the Travelling and Residence of Foreigners Act provides that "the Ministry of Internal Affairs is authorized to expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture".

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

According to the report as a result of the regulations within the scope of liberalisation of Exchange Legislation, there are no restrictions on migrant workers in transferring their wage and savings outside of the country.

The Committee seeks confirmation that there are no restrictions on transferring moveable property.

Conclusion

The Committee concludes that the situation in Turley is in conformity with Article 19§9 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information contained in the report the Committee notes that there continues to be no discrimination between migrant employees and self-employed migrants. However, in the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 12 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs applies to self-employed workers.

In its conclusions under Article 19§§1,4,6 and 8 the Committee has considered the situation in Turkey not to be in conformity with the Charter. Accordingly, the Committee concludes that the situation is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 1, 4, 6 and 8 of the same Article.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 11 - Teaching language of host State

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

The report states that by virtue of Turkey's ratification of the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families Convention children of migrant workers have equal rights in terms of access to education as nationals. Further the provisions of Articles 43 and 45 of the same Convention, impose on States the obligation to take measures in order to teach the local language first, so as to adapt the children of the migrant workers to the education system. The Committee notes that the information provided is insufficient for the Committee to assess the situation, the mere ratification of a treaty guaranteeing certain rights does not mean that they are implemented in practice.

According to the case law under this paragraph, States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age. The language of the receiving country is automatically taught to children throughout their formal education, but this measure is not sufficient to

fulfill the obligations arising out of Article 19§11. States must endeavour to introduce additional educational support alongside formal schooling for migrant workers' children who have not attended the first few primary school years and who may therefore lag behind their classmates who are nationals of the receiving state. States must furthermore encourage the teaching of the national language in the workplace, in the voluntary sector or in public institutions, such as universities. Such language classes must be provided free of charge in order not to worsen the already difficult position of migrants on the labour market.

Therefore the Committee asks for information on both the legal provisions and the situation in practice governing the teaching of the Turkish language to children of migrant workers, in particular additional educational support, as well as information on language teaching for adult migrant workers and their families. It requests information on the number of children and adults benefitting from such teaching, waiting lists for courses and any fees that may be payable.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 12 - Teaching mother tongue of migrant

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

The report cites the "Regulations on the Education of the Migrant Workers' Children" published in the Official Gazette no. 24936 dated 14th November 2002, which, *inter alia*, provides for mother tongue language teaching to migrant worker's children. However it is unclear to the Committee whether this only takes place within the framework of bilateral/reciprocal agreements. The Committee seeks clarification on this point. It recalls that the rights guaranteed in the Charter must be granted to all nationals of states parties lawfully within the territory, and are not dependent on reciprocity or bilateral agreements

The Committee refers to its interpretative statement in the general Introduction and asks the next report to provide the relevant information. In particular it wishes to know how many children benefit from mother tongue teaching, within school or through voluntary/cultural associations and what support the Government makes to enable this.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

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

Employment, vocational guidance and training

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities. It asks in this respect whether an overall national policy or strategy to enable persons with family responsibilities to exercise employment in a non-discriminatory manner is in place.

The Committee further recalls that Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities (Conclusions 2007, Armenia).

The report contains no information on this matter. It merely describes a number of measures and initiatives to promote equal employment opportunities for women, including by means of vocational training and education. The Committee notes that these measures are more relevant in the context of Article 20 of the Charter, which deals with "the right to equal opportunities and equal treatment in matters of employment and education without discrimination on the grounds of sex". It points out that the scope of Article 27 is wider, and applies to both men and women workers with responsibilities in relation to a child or another family member needing care, where such responsibilities may restrict their participation or advancement in economic activity. The Committee therefore asks if there exist any vocational guidance, counseling, information and placement services for workers with family responsibilities.

Working conditions, social security

Implementing Article 27§1 may also require the adoption of measures concerning length and organization of working time. Workers with family responsibilities should be allowed to work part time or to return to full employment (Conclusions 2005, Estonia). These measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement). As the report contains no information on this, the Committee asks the next report to describe any legislative provisions and/or collective agreements governing work conditions that may facilitate the reconciliation of working and private life, such as part-time work, working from home or flexible working hours.

The Committee points out that Article 27§1 requires State Parties to take account of the needs of workers with family responsibilities in terms of social security. It asks in this respect whether such workers are entitled to social security benefits under the different schemes, in particular health care, during periods of childcare leave.

The Committee notes from the report that unpaid childcare leaves taken by women are included within the service period.

Child day care services and other childcare arrangements

The Committee recalls that a core element for the reconciliation of professional and family life is the organisation of child day care services and facilities. The report states that pursuant to provisions in Labour Act No. 4857 there is an obligation to establish nursery and day care centres in state institutions and privately owned enterprises, which will be duly inspected. The actual establishment, supervision and inspection of private nurseries and day care centres is entrusted to the General Directorate of Social Security and Child Protection Agency. The children of working parents between ages 0-6 are admitted to these centres. The Committee recalls that staff working in nurseries should be suitably qualified (Conclusions 2006, Lithuania). It asks in this respect how qualifications of personnel and the quality of child care services in general are monitored.

The reports indicates that the number of nursery schools run by the Child Protection Agency are 11, with a capacity for 631 children.The number of private kindergartens is 1,616, with a total capacity for 93,869 children. The Committee asks if these institutions are merely for children in need of protection (orphans, poor or ill children etc.). It asks what is the current capacity in childcare provision for the whole country in general, what types of child care arrangements are in place and number of children cared for in each, including home care.

It also asks what forms of financial assistance are available for the parents of children attending childcare facilities.

The Committee recalls that should the required information (under the different headings above) not be provided in the next report there will be nothing to show that the situation in Turkey is in conformity with Article 27§1 of the Charter.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision.

The Committee further recalls that Article 27§2 requires States to provide the possibility for either parent to obtain parental leave. Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.

According to the report a woman employee can request, at the end of maternity leave, an unpaid leave up to six months (Section 74 of Labour Act No. 4857). Women working in the public sector may be granted an unpaid leave up to twelve months (Section 108 of Act No. 657). The report mentions that a draft law on "amendments to the civil servants law and labour law" is underway, with the aim of *inter alia*, establishing generally an unpaid childcare leave of 12 months, and the sharing of this leave between mother and father. However, as this draft amendment is still pending adoption, the Committee notes that current legislation only entitles the mother to take leave, and does not extend the right to the father of the child (nor to other relatives taking care of the child).

The Committee reiterates that under Article 27§2 both parents should be entitled to a leave to bring up their children, irrespective of whether they actually take it up. Childcare leave should be an individual entitlement granted separately to each parent. Hence, given that in Turkey fathers are not eligible to take childcare leave, the situation is not in conformity with this provision.

The Committee notes that the existing leave possibilities for women are unpaid. It recalls in this respect the importance of remunerating leave (be it continuation of pay or via social assistance/social security benefits) as a means of encouraging take up of childcare leave.

It also asks if at the end of the leave, women employees have the right to return to the same job.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 27§2 of the Charter on the ground that the law does not provide fathers with a right to parental leave.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

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

Protection against dismissal

The Committee notes that employees with indefinite contracts in companies with more than 30 employees cannot be dismissed without a valid ground related to their qualification or behaviour. The marital status or family obligations of an employee is not considered as a valid reason for the termination of a contract (Section 18 of Labour Act No. 4857).

The Committee asks if women taking unpaid childcare leave are also protected against dismissal within the scope of the abovementoned provision.

Effective remedies

An employee may claim unlawfulness of the termination of the contract before a court within 30 days of receiving the notification. When the court finds that the termination was based on an invalid reason, the employer is under the obligation to re-instate the employee. If this is not done, the employer must pay the worker compensation in an amount ranging between 4 to 8 months' salary, as well as up to an additional 4 months' salary for the period until the decision has become final.

The Committee recalls that Article 27§3 of the Charter requires that courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed, or in cases when the employee prefers not to continue or re-enter employment, order compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim. When compensation is granted it should not be subject to pre-defined upper limits, as this may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive (Conclusions 2005, Estonia).

As regards compensation, the Commitee asks whether the upper limit mentioned above covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

Moreover, the Committee asks for clarification on the situation of employees in companies with less than 30 employees. Are such workers also protected against dismissal on grounds of their family responsibilities, and, do they have the right to be re-instated in the company if they have been unfairly dismissed. The Committee recalls that reinstatement should be possible irrespective of the number of employees employed by an employer.

Conclusion

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

Article 31 - Right to housing

Paragraph 1 - Adequate housing

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

Under Article 31§1 of the Charter, the Committee considers that the States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing. States must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. They enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35).

More particularly, in connection with means of ensuring steady progress towards achieving the goals laid down by the Charter with regard to the right to housing, the Committee has emphasised that implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61).

The Committee moreover recalls that the right to housing must not be subject to any kind of discrimination on any of the grounds mentioned by Article E of the Charter and asks whether equal treatment is guaranteed to non-nationals who are lawfully resident or regularly working in Turkey with respect to access to adequate housing.

Criteria for adequate housing

The report indicates that the relevant provisions concerning the right to housing in the Constitution are Articles 56 and 57, which respectively provide that*:*

- *"Every citizen has the right to live in a healthy and balanced environment".*
- "*The State shall take measures to meet the needs of housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and shall support mass housing projects."*

The Committee notes from the report that rules governing construction of residential areas are set out in Mass Housing Act No. 2985 of 2 March 1984 and in Public Work Act No. 3194 of 3 May 1985. The report also indicates that the former Law (No. 2985) also regulates the support to be given by the State to meet the need for housing in Turkey.

The Committee asks whether the above-mentioned legislative framework includes a definition of adequate housing. In this respect, it recalls that it considers that the notion of adequate housing must be defined in law. It must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to owner occupied housing (Conclusions 2003, France).

The Committee also recalls that under Article 31§1, “adequate housing” means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, France and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

To enable it to assess whether the situation is in conformity with Article 31§1 of the Charter as regards access to adequate housing, the Committee asks for information in the next report on all the aforementioned points.

The Committee notes that there are no statistics or figures in the report relating to the adequacy of housing and there are no details about the funding allocated for measures to safeguard the right to adequate housing.

The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity (ATD v. France, § 63).

In view of the foregoing, the Committee asks the Government to provide it with statistics and figures in this respect and to describe measures taken and planned to improve the situation of people with inadequate housing.

Pending receipt of the information requested, it reserves its position on whether there is effective access to adequate housing and full enjoyment of this right.

Responsibility for adequate housing

The report indicates that the Housing Development Administration (*Toplu Konut Idaresi Baskanligi*/TOKI) is responsible for finding solutions to housing problems and to increasing housing production at the national level. The Ministry of Public Works and Settlement of Turkey (*Bayindirlik ve Iskan Bakanligi*) is responsible, *inter alia,* for providing services related to physical planning, land development and housing for low income families. The Committee asks whether the monitoring of adequacy of housing is included among the tasks of the above mentioned administrations.

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

The Committee asks whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and how public authorities supervise such rules.

Pending receipt of the above clarifications, the Committee reserves its position

Legal protection

The Committee underlines that it attaches particular importance to legal protection of the right to housing. The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective (Conclusions 2003 France).

Given the lack of information in this regard, the Committee asks for detailed information in the next report on all the above mentioned points.

Measures in favour of vulnerable groups

The Committee reiterates that States Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52; Centre on Housing Rights and Evictions *(*COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 35).

As regards the right to housing the Committee has held that equal treatment must be assured to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent

households, minors, persons with disabilities including mental health problems, persons internally displaced due to wars or natural disasters, etc. (Conclusions 2003, France). Furthermore, in its Conclusions 2006, it also drew particular attention on the situation of Roma and Travelers and "asked for national reports to provide comprehensive information on any measures introduced to take account of the fact that certain groups of the population, such as nomads, are particularly vulnerable and to secure for them the effective enjoyment of the rights enshrined in the Charter."

Moreover, with regard to Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (COHRE v. Italy, §§ 39-40).

The report does not include any information with regard to the groups of vulnerable persons mentioned above.

The Committee however notes from other sources[1] that:

- the urban transformation plans of 2005 (Act No. 5366 for the "sustainable use of downgraded historical real estate through protection by renewal") have resulted in destruction and forced dislocation of Romani neighbourhoods throughout Turkey.[2] Many Roma are exposed to poor living and sanitary conditions;[3]
- internally displaced persons, unable or unwilling to return to their villages, live in conditions of poverty and social exclusion, often in illegal substandard housing.[4]

The Committee requests the next report to supply detailed information on the steps taken to improve this situation. Meanwhile, it holds that the housing conditions of many Roma and internally displaced persons fall short from being respectful of the requirements of Article 31§1.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 31§1 of the Charter on the grounds that:

- measures taken by public authorities to improve the substandard housing conditions of most Roma in Turkey are inadequate;
- insufficient measures were taken by public authorities to improve the substandard housing conditions of most internally displaced persons.

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[1] ECRI report on Turkey (fourth monitoring cycle), adopted on 10 December 2010 and published on 8 February 2011 (document CRI(2011)5) and Report by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey on 28 June - 3 July 2009, Issue reviewed: Human rights of minorities (document CommDH(2009)30.

[2] Report by the Commissioner for Human Rights of the Council of Europe, document CommDH(2009)30 quoted above, § 133.

[3] ECRI report on Turkey, document quoted above, § 75.

[4] ECRI report on Turkey document quoted above, § 123.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

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

Homeless persons are those persons who legally do not have at their disposal a dwelling or another form of adequate housing in the terms of Article 31§1 (Conclusions 2003, France).

Article 31§2 of the Charter is directed at the prevention of homelessness with its adverse consequences on individuals' personal security and well being (Conclusions 2005, Norway). States Parties must therefore take action to prevent categories of vulnerable people from becoming homeless (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §54).

- This implies that they shall implement a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances (this is more specifically related to Article 31§3) and that they shall encourage the long term re-integration of homeless persons such as, for example, measures aiming at raising the employment rate, increasing the stock of social and non-profit housing, allocating social benefits to those in urgent needs, developing social security programmes and supporting NGOs' activities (see section on "preventing homelessness" below).
- It also requires that procedures be put in place to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned (see section on "forced evictions" below).

States Parties must also take measures to reduce homelessness with a view to eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter (see section of "the right to shelter" below).

In the light of the above, for the situation to be in conformity with Article 31§2, States Parties must:

- adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

Preventing homelessness

The report lacks information with respect to the prevention of homelessness. It merely states that "the number of homeless persons in the country is not too high due to strong family ties of the population".

In the light of the requirement recalled above with respect to the maintaining of statistics, the Committee asks the next report to include more precise data. It also requests that the next report indicate whether the demand for emergency solutions corresponds to the offer and if not, what measures are envisaged, including to face problems of funding of such measures. Meanwhile, it reserves its position in this regard.

Forced eviction

Forced eviction is the deprivation of housing which a person occupied due to insolvency or wrongful occupation (Conclusions 2003, France). Under Article 31§2 States Parties must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden).

In view of the importance of the right to housing, which is an aspect of individuals' personal security and well-being, the Committee attaches great importance to the relevant procedural safeguards (see Conclusions 2005, Sweden; see, *mutatis mutandis*, European Court of Human Rights, Connors v. United Kingdom, judgment of 27 May 2004, §92). The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;

- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

The Committee also recalls that when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51). Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be forced to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (ERRC v. Bulgaria, § 53).

In the absence of specific information in the report concerning the legal protection of persons threatened by eviction as well as of the rules governing the procedures of eviction, the Committee asks that this be included in the next report bearing in mind the requirements recalled above. The Committee also asks that the next report include figures concerning evictions, rehousing or financial assistance provided following eviction.

Meanwhile, the Committee notes from other sources[1] a series of cases of forced evictions of Roma during the reference period which allegedly carried out with the involvement of the police forces under conditions which did not respect the dignity of the persons concerned.[2] The Committee also notes that the demolition of the historic Romani neighbourhood of Sulukule in Istanbul was followed by the forced relocation of many of its inhabitants without adequate consultation of the housing needs of those oncerned.[3]

The Committee holds that irrespective of the nature of tenure, everyone should be afforded a degree of security of tenure. Any proposed relocation of a community should take place only following adequate and reasonable notice for all affected persons prior to the scheduled date of eviction and genuine consultation with those affected. No form of discrimination is permissible in the implementation of removing persons from housing by force.

The Committee requests the next report to supply detailed information on the steps taken to improve this situation. Meanwhile, it holds that the evictions of many Roma which were carried out during the reference period fall short from being respectful of the requirements of Article 31§2.

Right to shelter

According to Article 31§2, homeless persons must be offered shelter as an emergency solution.

The report indicates that the local authorities provide various services to shelter the homeless. No further detail is included in the report. In the light of the principles recalled below, the Committee asks the next report to provide more information.

The Committee recalls that to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities

such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62).

Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children unlawfully present in their territory for as long as they are in their jurisdiction (DCI v. the Netherlands, §§47 and 64).

The temporary provision of shelter, however adequate, cannot however be considered a lasting solution.

- As regards, persons lawfully resident or regularly working within the territory of the Party concerned accommodated in emergency shelters, they must, within a reasonable time, be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1.
- As regards persons unlawfully present within the territory, since no alternative accommodation may be required by States for them, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity (DCI v. the Netherlands, § 63).

The Committee asks for the next report to clarify whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

Pending receipt of this information, the Committee reserves its position in this respect.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 31§2 of the Charter on the ground that evictions of Roma have occurred without respecting the necessary procedural safeguards to guarantee full respect of every individual's human dignity.

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[1] ECRI report on Turkey (fourth monitoring cycle), adopted on 10 December 2010 and published on 8 February 2011 (document CRI(2011)5) and Report by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey on 28 June - 3 July 2009, Issue reviewed: Human rights of minorities (document CommDH(2009)30).

[2] Report by the Commissioner for Human Rights, document CommDH(2009)30 quoted above, §§ 135-138.

[3] Sulukule UNESCO report 2008, International Alliance of Inhabitants (IAI), "Respecting the human and housing rights of all residents at Edirnekapı Hatice Sultan and Neslişah Neighborhoods (Sulukule, Istanbul)", 2 September 2008 as well as Report by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey on 28 June - 3 July 2009 (document CommDH(2009)30.

Article 31 - Right to housing

Paragraph 3 - Affordable housing

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

Under Article 31§3 of the Charter, the Committee considers that an adequate supply of affordable housing must be ensured for persons with limited resources (Conclusions 2003, France).

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located (Conclusions 2003, France).

The Committee considers that in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income (European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72).

Social housing

Social housing should target, in particular, the most disadvantaged (International Movement ATD Fourth world (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100).

The report indicates that according to data collected by the Housing Development Administration (TOKI) during the reference period 460 387 houses were built and 85% of these were "social housing" and 30% of such social housing were attributed to the very poor.

The Committee asks that the next report include data also as concerns the demand for social housing. It also asks for more information on the operation of the "Mass Housing Fund".

The Committee recalls that in order to increase the supply of social housing and make it financially accessible, it considers that under Article 31§3 States Parties are required:

- to adopt measures for the provision of housing, in particular social housing (Conclusions 2003, France);
- to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive ATD v. France, § 131).

With respect to the first requirement, the Committee notes from the report that the prices of houses sold in the context of social housing projects are determined taking into account only the costs of production. In addition, the report refers to a system of subsidies to facilitate the payment of costs by the most disadvantaged. The report however does not contain any concrete indication of the working of such system and the number of persons concerned. The Committee thus requests the next report to include the relevant information.

As regards the issue of remedies with respect to excessive waiting periods for the allocation of housing, the report is silent. The Committee asks that the next report contain the requisite information in this regard. The Committee recalls that it attaches considerable importance to legal protection of the right to housing. If the necessary information is not provided in the next report there will be nothing to show that Turkey is in conformity with Article 31§3 of the Charter in this regard.

The Committee recalls that it attaches considerable importance to legal protection of the right to housing. If the necessary information is not provided in the next report there will be nothing to show that Turkey is in conformity with Article 31§3 of the Charter in this regard.

Housing benefits

Under Article 31§3, States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population (Conclusions 2003, France). A housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal (Conclusions 2003, France).

The report indicates that the poor and persons with low income are supported by "social housing projects". The report however does not provide any further details in this respect.

The Committee therefore asks that the next report clarify the situation by indicating firstly whether such support is also financial. It also asks how many persons qualify for such social housing projects, how many persons are granted the support in practice and whether with such support housing becomes affordable also for the low-income and disadvantaged sections of the population. Finally, the Committee also asks whether remedies are available for those who are refused support by social housing projects.

The Committee recalls that the right to affordable housing must not be subject to any kind of discrimination on any grounds mentioned by Article E of the Charter. It notes that the report does not provide information about equality of treatment as regards access to affordable housing, that is equal access for non-nationals to housing benefits provided by the Government. It therefore asks that this information be provided in the next report.

Conclusion

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