March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

TURKEY

This text may be subject to editorial revision.

The following chapter concerns Turkey which ratified the Charter on 27 June 2007. The deadline for submitting the 10th report was 31 October 2017 and Turkey submitted it on 2 May 2018.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Labour Rights":

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

Turkey has accepted all provisions from the above-mentioned group except Articles 2§3, 4§1, 5 and 6.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Turkey concern 16 situations and are as follows:

– 7 conclusions of conformity: Articles 2§2, 2§4, 2§5, 2§6, 2§7, 21 and 29,

– 5 conclusions of non-conformity: Articles 2§1, 4§2, 4§4, 4§5 and 28.

In respect of the 4 other situations related to Articles 4§3, 22, 26§1 and 26§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 26§1

Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "*Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment*". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment.

Article 26§2

In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the *"Guideline on Psychological Harassment in Workplaces"*, which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment.

* * *

The next report will deal with the following provisions of 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 (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 opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In its previous conclusion (Conclusions 2014), the Committee noted that flexible working time arrangements allowed working weeks of more than 60 hours and found that the situation was not in conformity with the Charter. The report does not provide any information on this subject so the Committee reiterates its finding of non-conformity on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements. It asks for information in the next report on all the changes to legislation made in the context of flexible working time arrangements.

Nonetheless, the Committee takes note of the improvements described in the report with regard to certain types of worker. It notes in particular the amendment to the Labour Code which came into force during the reference period, as a result of which the working hours of workers in underground mines is now limited to seven and a half hours per day and thirty-seven and a half hours per week. Under Regulation No. 28737 of 16 August 2013, pregnant or breastfeeding women's daily working hours may not now exceed seven and a half hours.

The Committee also notes that a regulation on work limited to a maximum of seven and a half hours per day for health reasons was adopted on 16 July 2013.

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered or not as a rest period. In reply the report states that under Article 14 of the Labour Code, both active and inactive periods of on-call duty are regarded as working hours. The Committee finds this situation to be in conformity with the Charter.

The Committee notes the statistics on offences reported by the labour inspectorate and the penalties imposed. In particular, during the reference period, an administrative fine of 8,078,737.30 TRY was demanded to be imposed about 2 546 employers determined to have violated the provisions of the Regulation on working hours.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 2§2 of the Charter and asked whether there was an exhaustive list of criteria to identify the circumstances under which work was allowed during public holidays.

In reply, the report indicates that under Article 44 of the Labour Code, matters relating to work carried out on public holidays are governed by collective agreements or employment contracts. If they do not include any provisions on this subject, the employee's consent is necessary. No other detailed list of criteria exists.

According to the report, compliance with the legislation on work performed on public holidays is monitored by the Labour Inspection Board, which reported 230 breaches and imposed fines totalling TRY 3 354 661 during the reference period.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 2§2 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§4 of the Charter.

There has been no change to this situation, therefore the Committee reiterates its finding of conformity.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§5 of the Charter and asked for confirmation that employees could not forfeit their weekly rest period or have it replaced by financial compensation. It also asked under what circumstances a rest day might be postponed and, in that case, whether there were circumstances under which a worker might have to work more than twelve days in succession before being granted a two day rest period.

In reply, the report states that under Article 46 of the Labour Code, employees covered by this provision are entitled to at least 24 hours' uninterrupted rest for every seven days worked. Under Article 99 of Law No. 657 on the civil service, which establishes the standard weekly working hours for civil servants, Saturdays and Sundays are non-working days. The report states that weekly rest periods may not be replaced by financial compensation and workers may not forfeit them. Weekly rest periods may not be deferred for more than twelve consecutive days.

The Committee notes that compliance with the legislation on rest periods is monitored by the Labour Inspection Board, which imposed fines totalling TRY 55 132,00 on about 30 employers during the reference period.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee considered that the situation was in conformity with Article 2§6 of the Charter and asked to confirm explicitly that all the elements of information provided for by Article 2§6 of the Charter were made available in writing to civil servants upon commencement of their employment.

In reply, the report indicates that the qualifications, appointments, duties, powers, rights and responsibilities, salaries and allowances and other matters related to the status of civil servants are regulated by the Civil Servants Law No. 657 of 14 July 1965, in accordance with Article 128 on General Principles of the Turkish Constitution.

According to the report, officials may obtain other necessary information from the said law, in particular concerning general rights, restrictions, right to annual leave, economic and social rights, the procedure of appointment and resignation.

The Committee asks that the next report clearly indicate whether civil servants receive, upon starting of the employment relationship or soon thereafter, written information referring to the applicable legislative provisions and including therefore the elements of information required under Article 2§6 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 2§6 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity and asked for clarification on who was considered a night worker. It also asked whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work. The Committee notes that night work may not exceed seven and a half hours.

The report indicates that under Article 7 of the Regulation on special rules and procedures concerning shift work, night work is defined as work which lasts more than half the night. Under Article 69 of the Labour Code, night is understood to be the hours between 8 p.m. and 6 a.m. The Committee asks if all employees working at night are considered as night workers.

In reply to the Committee's questions, the report indicates that, under Article 20 of Law No. 6331 of 20 June 2012 on occupational health and safety, employers must select a workers' representative who is authorised to contribute to studies on occupational health and safety, monitor such work, call for measures to eliminate danger or reduce risks and represent employees on such matters. Night work forms part of these responsibilities. The Committee noted previously (Conclusions 2017, Article 3§2) that, where no representative is elected or chosen to represent workers, employers will designate a representative from among their employees while taking account of the risks present in the workplace and ensuring balanced representation of workers. Any company employing between 2 and 50 employees must have a workers' representative. The Committee asks again if these representatives are consulted on night work.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was not in conformity on the ground that civil servants were not entitled to an increased time off in lieu of remuneration for overtime hours.

There has been no change to this situation, therefore the Committee reiterates its previous finding f non-conformity.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 4§2 of the Charter on the ground that civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

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

Legal basis of equal pay

In its previous conclusions (Conclusions 2012 on Article 4§3 and Conclusions 2016 on Article 20) the Committee noted that Article 5 of the Labour Law No. 4857 prohibits discrimination between the sexes. It further provides for the right to equal pay for equal work or work of equal value. The Committee asks if statutory provisions prohibits both direct and indirect discrimination.

Guarantees of enforcement and judicial safeguards

In its previous conclusion (Conclusions 2016, Article 20) the Committee found that there was an upper limit of eight months wages to the compensation paid to victims of discrimination and concluded that the situation was not in conformity with the Charter. The Committee notes in this regard that the provisions of the Civil Code and the Code of Obligations should also be taken into account in the employment relations. Since compensation is not a means of unjust enrichment, the damage of an illegal behaviour is to be compensated only once. Therefore, compensation for discrimination cannot be demanded together with compensation for job security. However, the Committee notes that it is possible for the employee to demand financial and moral compensation due to the attacks arising from the employment relationship to his/her personal rights within the framework of general provisions of the Civil Code and Code of Obligations. Compensation in the Labour Law has the purpose of protection against attacks directed towards personality or recovery of material/moral damage arising from the attack. In this respect, the provisions of the Civil Code and the Code of Obligations which should be applied in case of attacks of personality should be taken into account also in employment relation. In this regard, the ceiling calculations stipulated in Articles 17 and 21 of the Labour Law are not valid for material and moral damages. It also means that there is no upper limit for the compensation for financial and moral damages under the framework of the Civil Code and Code of Obligations.

The Committee recalls that under the Charter, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation). The Committee understands that there is no ceiling to the compensation that may be awarded under the Civil Code and Code of Obligations in equal pay cases. The Committee asks the next report to confirm this understanding. The Committee also asks the next report to provide information on the pay discrimination cases decided by the courts and level of compensation awarded for pecuniary and non-pecuniary damage.

As regards the burden of proof, the Committee notes that Article 21 of the Human Rights and Equality Institution Law provides that if the applicant exhibits the presence of strong signs and presumptive facts relating to the veracity of his/her allegation, then the other party shall be required to prove the non-violation of the non-discrimination and principle of equal treatment. However, the Committee asks if the law provides that in the proceedings before national courts there is the shift of burden of proof on defendant in case possible discrimination victim demonstrates the facts from which it may be presumed that there was discrimination.

As regards the sanctions imposed for the violation of non-discrimination principle, the Committee takes note of the Law on the Human Rights and Equality Institution of Turkey, No 6701 of 6 April 2016, which prohibits discrimination against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnic

origin, wealth, birth, marital status, health status, disability and age. According to Article 25, in case of violation of non-discrimination principle, an administrative fine depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination, shall be imposed on the relevant public institutions and agencies, professional organisations with public institution status, natural persons and legal persons established under private law responsible for the violation.

The Committee takes notes activities of the Human Rights and Equality Institution which investigates discrimination upon complaint ex-officio and imposes fines on persons and public/private legal entities in case of discrimination. Natural persons and legal entities can file complaints of discrimination. Applications can be made directly to the Human Rights and Equality Institution or through governors in towns and sub-governors in sub-towns. Applications are free of charge.

Methods of comparison

The Committee notes that as regards out of company comparisons, according to the report, pursuant to Article 12 of Labour Law No. 4857, the comparable employee is the one who is employed under an open-ended contract in the same or a similar job in the establishment. Where there is no such employee in the establishment, then an employee with an open-ended contract performing the same or a similar job in a comparable establishment falling into the same branch of activity will be considered as the comparable employee. The Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company. The Committee also asks the next report to provide information concerning the criteria according to which equal value of different works is evaluated.

Statistics

The Committee notes that according to the report, the overall pay difference based on gender was in favour of women (-0.4%), both for average gross annual income and average gross annul wage. Nevertheless, when examined according to the level of educational attainment, there is a significant wage and income gap in favour of men, at all levels of education. Likewise, the gender pay gap by economic activity is also to the detriment of women to a large extent.

The Committee asks the clarification concerning the reasons for the negative pay gap (in favour of women) despite the fact that at all educational levels and in all economic activities (except for education) women earn less than men.

Policy and other measures

The Committee takes note of the National Employment Strategy (2014-2023) as well as the Equality at Work Platform, in the framework of which measures are being implemented with a view to preventing discriminatory practices in the labour market and strengthening gender equality. It also takes note of the project on Strengthening Women for Decent Work in Turkey as well as the activities of the Turkish Gender Mainstreaming Task Group .

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter on the grounds that no period of notice was required for dismissal during the probationary period and that no period of notice was required for dismissal on the grounds of long-term illness, or arrest.

The report states that there has been no change in the situation during the reference period. The Committee, therefore, reiterates its previous conclusion of non-conformity as regards the lack of notice period during the probationary period.

In its previous conclusion (Conclusions 2014), the Committee asked the next report to specify the application, in law and in practice, of the provision in Article 14§1 and 2 of Act No. 1475, as regards notice periods provided for in Article 17§2 of the Labour Code (two weeks below six months of service; four weeks between six 18 months of service; six weeks between 18 and 36 months of service; eight weeks beyond 36 months of service) and dismissals for reasons of health or force majeure (reasons in paragraphs 25-I and 25-III of the Labour Code).

The report indicates that, according to Article 14 of the Act No. 1475, employees with more than one year of service with the same employer, are entitled to severance pay in case of dismissal on grounds other than employee's immoral behavior. Employees dismissed on grounds provided for by paragraphs 25-I and 25-III of the Labour Code , are entitled to severance pay. In addition, they are entitled to severance pay in case of termination of the employment contract due to being called for compulsory military service. The Committee, asks in particular the next report to indicate whether severance pay is additional or in lieu of notice periods, where applicable. It also asks whether severance pay applies in cases of termination of employment on the ground of arrest of the employee (paragraph 25-IV of Labour Law). Pending receipt of the requested information, the Committee reserves its position on this point .

Furthermore, the report states that where fixed-term contracts are terminated early, the employee is entitled to compensation, amounting to the "determined amount" or to the amount of wages for the remaining months.

In its previous conclusion the Committee asked for information concerning notice periods and/or severance pay in agricultural and forestry work, which are determined by the Ministry of Labour and Social Security (Article 111§2 of Labour Code); and other legal obligations which give rise to application of the period of notice provided for in Article 31§1 of the Labour Code.

In reply, the report states that, as regards agricultural and forestry work, the provisions of the Labour Code apply to undertakings with more than 50 employees. Furthermore, as regards other legal obligation referred to in Article 31 of the Labour Code (military service, statutory labour service), the employment contract of employees with more than one year of service, ends after two months have elapsed from the date of the employee's departure. The Committee asks in this regard whether any notice period applies to employees with less than year of service, who are being called for military service or statutory labour service.

The Committee noted that the Labour Code only applies to undertakings with more than 50 employees and requested information on the situation of employees covered not by the Labour Code but by the Code of Obligations (Conclusions 2014), and requested information on notice periods applicable to activities and employment relationships, which are not subject to the provisions of the Labour Code (sea and air transport; agricultural and forestry undertakings employing less than 51 employees; construction work relating to agriculture within the limits of family business; home work performed by family members or close

relatives; domestic work; sport; reinstated employees; undertakings with less than four employees falling within the definition given in section 2 of the Tradesmen and Craftsmen Act of 18 July 1964 (No. 507)).

In reply, the report states that, in these cases, Article 432 of the Turkish Code of Obligations provides for notice periods applying to contracts of indefinite duration. Employees with up to one year of service are entitled to two weeks' notice. Employees with one to five years of service are entitled to one months' notice and those with more than five years of service are entitled to six weeks' notice. Individual employment contracts may provide for increased notice periods. Notice periods may be replaced by compensation, which amounts to the wages corresponding to the notice period. The Committee asks the length of notice periods, if any, that apply to early termination of fixed-term contracts and termination of employment during the probationary period for employees covered by the Code of Obligations. The Committee considers that the situation is not in conformity with Article 4§4 of the Charter, on the ground that two weeks' notice period is not reasonable for employees with more than 6 months and less than a year of service and six weeks' notice period is not reasonable for workers with more than five years of service.

The report does not provide information in reply to the Committee's previous request for details of the reasons for termination of service and disciplinary dismissal provided for in the Civil Servants Act of 14 July 1965(No. 657), as amended by Law No. 5655 of 9 May 2007. The Committee, therefore, reiterates its previous question.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 4§4 of the Charter on the grounds that:

- no notice period is required for dismissal during a probationary period;
- a two weeks' notice period, is not reasonable for employees employed in agriculture and forestry in enterprises with less than 50 employees with more than six months and less than a year of service;
- a six weeks' notice period, e, is not reasonable for employees employed in agriculture and forestry in enterprises with less than 50 employees, with more than five years of service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§5 of the Charter on the ground that after all authorized deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependats.

According to Article 35 of the Labour Law, the attachment, transfer or assignment of wages is limited to 25% of wage, however, this limit does not include maintenance payaments ordered by a court. The Committee, while observing that Turkey has not ratified Article 4§1 of the Charter, has previously noted the low level of the minimum wage. It thus considered that the limit of 25% allows situations to persist in which workers receive only 75% or less of the minimum wage, an amount which does not enable them to provide for themselves or their dependants. The report does not indicate any change during the reference period as regards limits to deductions from wages. The Committee considers that the situation is not in conformity with Article 4§5 of the Charter on the ground that employees with the lowest pay and their dependants may be deprived of their means of subsistence.

The report states that, pursuant to Article 38 of the Labour Law, deductions to wages due to fines may be imposed only if they are laid down in a collective agreement or the employment contract. These deductions should not exceed the limit of three days' wages per month or, in case of piecework or amount of work to be done, they should not exceed the limit of two days' wages. The amounts thus recovered are credited to the account of Ministry of Labour and Social Security, which uses them for training and social services for employees.

In its previous conclusion (Conclusions 2014), the Committee asked for detailed information on the limitation to deductions from wages applicable civil servants. The report does not provide the requested information. The Committee, therefore, reiterates its previous question.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the Charter on the ground that after maintenance payments and all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 21 of the Charter. It will therefore only consider recent developments and additional information.

The report emphasises that no amendments have been made to the relevant legislation during the reference period.

In reply to the Committee's question on the transposition of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, the report indicates that the Directive has been transposed by the Law on Trade Unions and Collective Labour Agreements No. 6356 which was enacted on 18 October 2012 and entered into force on 7 November 2012. According to this law, trade union representatives are responsible, among others, to ensure the consultation and participation of workers, determine the worker's representatives who will participate in the annual paid leave board, participate in the occupational health and safety committee.

Personal scope

In its previous conclusion, the Committee asked how trade union representatives are informed in practice of any matter that could affect their working environment. The report indicates that they are informed by announcement panels at the workplace and by digital ways of communication. According to Article 4 of the Communiqué on the Qualifications of the Employee Representative relating to Occupational Health and Safety and the Principles and Procedures for Selection (No. 28750, OG on 29th August 2013), an employer has to assign an employee representative as a designated contact person in order to share information.

The Committee also asked whether all employees enjoy the right to information and consultation both in the private and public sector and whether there are any thresholds, established by national legislation or practice, in order to exclude undertakings that employ less than a certain number of workers. In response, in addition to information provided previously, the report states that all workplaces, both public and private, and all employees regardless of their status or number enjoy the protection of the Law on Occupational Health and Safety. However, the Committee asks for confirmation whether the above mentioned law covers all provisions of Article 21 including the right of information and consultation with regard to the economic and financial situation of the undertaking (see Article 21a).

Material scope

In its previous conclusion, the Committee asked whether the material scope concerning the right of workers to be informed and consulted includes the economic and financial situation of the undertaking. The report does not provide any information on the matter. The Committee therefore reiterates its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Turkey is in conformity with Article 21 of the Charter.

Supervision

In its previous conclusion, the Committee asked for information on the body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking with special regard to powers and operational means. The report indicates that

the Occupational Health and Safety Council is an appeal body employees may apply to if health and safety regulations are not abided by the employer. Moreover, the labour inspection is responsible to monitor the implementation of the labour and occupational health and safety regulations. In particular, the Committee notes from the report that the control of the right to information and consultation according to Article 16 of the OSH Law is ensured by the Labour Inspectorate.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 21 of the Charter.

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

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

In its previous conclusions (Conclusions 2014 and 2016), the Committee concluded that the situation was not in conformity with Article 22 of the Charter on the ground that it has not been established that legal remedies were available to workers for infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Working conditions, work organisation and working environment

In its previous conclusions (Conclusions 2014), the Committee asked to indicate what happens in undertakings where there are no trade union representatives who according to Article 27 of the Law No. 6356 on Trade Unions and Collective Labour Agreement have to inform employees on relevant labour legislation, resolve workers' complaints, ensure working cohesion between workers and employers, observe the rights and benefits of workers, facilitate the application of working conditions envisaged in labour law and collective agreements and ensure consensus among employees in respect of work organisation and working environment.

The report indicates that according to Article 18 of the Occupational Health and Safety Law, an employer has to consult workers directly or worker's representatives elected by the workers of an undertaking if no representatives authorized by a trade union are present within the undertaking. The Committee observes that the information presented concerns only health and safety, therefore it reiterates its question. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Turkey is in conformity with Article 22 of the Charter.

The Committee understands that all consultation rights granted to trade union representatives (Article 27 of the Law on Trade Unions and Collective Labour Agreements) are equally granted to workers in case no trade union is present and asks for confirmation.

In its previous conclusion, the Committee also asked what the competences of the administration boards established according to Article 22 of the Law on Public Employees and Collective Agreement No. 4688 are in relation to the right of workers to take part in the determination and improvement of working conditions and working environment. The Committee notes that the report contains no information concerning the matter and therefore reiterates its request.

Protection of health and safety

In reply to Committee's question concerning detailed information on the Regulation on boards of occupational health and safety, the report indicates that these boards are constituted at least by representatives of employer and employee, an occupational safety expert, a workplace physician and personnel in charge of human resources and social or administrative and financial affairs. The duties include guidance to employees in the workplace about occupational health and safety, the assessment of hazards and precautions and determination of the appropriate measures as well as planning the training and education of occupational health and safety in the workplace. The Committee takes note of the detailed description of the operating principles as laid down in Article 9 of the Regulation.

The Committee further asked how the negotiations as provided by Article 18 of the Law on Occupational Health and Safety No. 6331 work in undertakings with less than 50 employees where workers have the possibility to express their opinion on health and safety issues within the framework of said negotiations. The report indicates that workers and/or their representatives have the right to make proposals on health and safety measures and are

allowed to take part in discussions. The employer has to make sure workers and/or their representatives are able to participate in said discussions.

Organisation of social and socio-cultural services and facilities

The Committee recalls that it previously noted (Conclusions 2014) that employee participation in the organisation of social and socio-cultural services and facilities is guaranteed through participation of their representatives in the conclusion of collective agreements.

Enforcement

In its previous conclusion, the Committee asked for detailed information on the authority responsible for the protection of safety and health at work. It also asked whether there exists a possibility of appeal to the courts when these rights are not respected.

In reply, the report indicates that the Labour Inspection Board is responsible to monitor and regulate the working conditions and the working environment by observing and inspecting the application of the provisions provided for by the Labour Law and the Law on Occupational Health and Safety. The Board also moderates between employers and employees in case of conflict within the undertaking. If a violation of the right to take part in the determination and improvement of the working conditions and working environment is discovered during an inspection, the Board notifies the relevant persons within the undertaking that correction is needed and provides reports on the matter. The Labour Inspection Board also has the power to apply administrative sanctions. The parties involved have the right to submit the subject to court.

Moreover, according to Article 18§3 of the Occupational Health and Safety Law No. 6331 workers and/or their representatives have the right to appeal when they consider the measures taken to ensure safety and health protection at work inadequate. The Committee understands that this includes judicial proceedings before the competent courts and asks for confirmation.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The Committee previously noted (Conclusions 2014) that Article 417 of the Code of Obligations set an obligation for the employer "to take all necessary measures to protect the employees from moral (psychological) and sexual harassment", but that there was no regulation concerning preventive measures yet and asked for information on the measures taken in order to ensure effective protection from sexual harassment and on whether and to what extent employers' and workers' organisations were consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

According to the report submitted by Turkey in the framework of Conclusions 2016, some training on sexual and psychological harassment in the workplace was organized for judges and ministry of justice staff in 2016. However, this does not clarify how employers implement their obligations to take preventive measures and whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

The Committee accordingly reiterates these questions and points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Liability of employers and remedies

The report indicates that, pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "*Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment*". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment.

The Committee refers to its previous conclusions (Conclusions 2014 and 2016) and the related national reports as regards the relevant legal framework (in particular, Article 50 of the Constitution, Articles 5 and 24-26 of the Labour Code, the abovementioned Article 417 of the Code of Obligations and Article 105 of the Penal Code, as amended). The Committee previously took note that, under these provisions, a victim of sexual harassment is entitled to terminate the employment contract and that the perpetrator could be dismissed without notice, but asked for clarifications about the employer's liability.

In particular, it asked whether the employer could be held responsible for not having taken preventive and/or remedial measures if the worker was subject to sexual harassment by another employee or a third person, and whether any liability of the employer applied in cases where third persons suffer sexual harassment from persons under the employer's responsibility.

In this respect, the report confirms that, under Article 417 of the Code of Obligations, the employer has the obligation to protect the worker against the sexual harassment of the other workers, employers' representatives, as well as any other third parties visiting the workplace. The report also indicates that anyone who is subject to harassment can ask for judicial protection under Articles 24§1 and 25§1 of the Civil code.

As regards the procedures available, the Committee noted (Conclusions 2014) that the victim of sexual harassment can file a penal complaint and request the adoption of protection and remedial measures. It asked what procedures before an independent body, other than

criminal procedures, were available to victims or sexual harassment in the workplace – including in respect of civil servants – in the light of relevant case law examples. On this issue, the report refers to the possibility to seise a civil judge of the matter under Articles 24§1 and 25§1 of the Civil Code (see above) and to invoke a breach of contract under Article 417§3 of the Code of Obligations.

The report also refers to procedures before the Human Rights and Equality Institution. As the implementing regulations of this institution entered into force in 2017, out of the reference period, the Committee asks the next report to provide all relevant information concerning this institution, in particular as regards its independence, as well as regards its functioning in the light of any relevant information and data concerning the sexual harassment complaints dealt with by this institution and their outcome.

As regards the right not to be retaliated against for upholding the right to protection from sexual harassment, the Committee asks whether this is covered by the employer's obligation, under Article 417 of the Code of Obligations, to protect victims of harassment from further harm and asks how this clause has been interpreted in the case-law.

Burden of proof

The Committee notes from the report that Article 5 of the Labour Code requires the employee to prove that there was a breach of equal treatment by the employer but, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer. The Committee asks the next report to clarify whether this involves a shift in the burden of proof in practice in such proceedings. It also asks whether this applies to all civil law claims brought in respect of sexual harassment, also under different provisions of the Labour Code, or under Articles 24-25 of the Civil Code and the Code of Obligations.

Damages

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. Furthermore, victims of sexual harassment must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to harassment.

As regards compensation, the Committee previously noted (Conclusions 2014) that material and moral damages could be claimed by victims of (sexual or moral/psychological) harassment under Article 49 and 417 of the Code of Obligations, but no details were provided in this respect. The current report indicates that non-pecuniary damage can be claimed also on the basis of Article 24 of the Civil Code and Article 58 of the Code of Obligations, if the harassment behaviour led to the violation of personality rights. However, the Committee notes that the case-law examples which have been provided do not clarify what redress has been granted to victims in practice and, in particular, whether any ceilings apply to the compensation which can be granted. It asks the next report to clarify this point, in particular as regards moral damages awards.

As regards reinstatement, the Committee noted (Conclusions 2014) that under Article 24 of the Labour Code, victims of (sexual or moral/psychological) harassment have the right to terminate their employment contract and obtain a severance pay corresponding to four months' salary, plus the restoration of the rights they have been deprived of because of the discriminatory treatment. In addition, under Article 20 of the Labour Code, workers who have been unfairly dismissed can request their reinstatement. The Committee asks whether this right applies also when the worker has resigned because of the sexual harassment suffered,

whether the termination of contract has formally taken place invoking Article 24 of the Labour Code or not.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

Prevention

The Committee notes from the report that the employer has the obligation to prevent moral (psychological) harassment in the workplace and greater damage to employees who have already suffered from it (Article 417 of the Code of Obligations). In its previous conclusion (Conclusions 2014), the Committee noted that, pursuant to a Prime Minister's circular of 2011, an Action Plan on prevention of moral (psychological) harassment in the workplace was launched for 2012-2014. A psychological support hotline (ALO 170) as well as a Board against moral harassment were also set up.

In response to the Committee's request for updated information on the implementation of the planned measures, the report indicates that, in 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the *"Guideline on Psychological Harassment in Workplaces"*, which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment. According to the report, the organisation of training and information on moral (psychological) harassment falls within the responsibility of the Ministry of Labour and Social Security. In addition, the report indicates that the Ministry of Family and Social Policy issued brochures concerning, among others, moral (psychological) harassment in the workplace. The Committee also notes from the information provided in the framework of Conclusions 2016 that training programmes on mobbing were organised in 2015 for labour inspectors and assistant labour inspectors.

The Committee asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of moral (psychological) harassment in the workplace.

Liability of employers and remedies

The Committee had previously taken note of the definition of moral (psychological) harassment contained in the abovementioned circular of 2011 but it had noted that there was no such explicit definition in the law (see Conclusions 2014). In this respect, the report indicates that under the Turkish Human Rights and Equality Authority Law, enacted in April 2016, harassment is now explicitly considered as a type of discrimination and is defined as "*Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment*". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours could also be considered as harassment and that occasional acts, which would not be continuous or frequently repeated, don't qualify as moral (psychological) harassment.

The Committee refers to its previous conclusions (Conclusions 2014 and 2016) and the related national reports as regards the relevant legal framework (in particular, Articles 17, 48 and 50 of the Constitution, Articles 5 and 24 of the Labour Code*,* the abovementioned Article 417 of the Code of Obligations, Article 13 of the Law on Occupational Health and Safety and Article 125 of the Penal Code, as amended*).* It previously took note that, under these provisions, a victim of moral (psychological) harassment is entitled to terminate the employment contract and that the perpetrator could be dismissed without notice, but asked for clarifications about the employer's liability.

In particular, it asked whether the employer could be held responsible for not having taken preventive and/or remedial measures if the worker was subject to moral (psychological) harassment by another employee or a third person, and whether any liability of the employer

applied in cases where third persons suffer sexual harassment from persons under the employer's responsibility. In this respect, the report confirms that, under Article 417 of the Code of Obligations, the employer has the obligation to protect the worker against the harassment of the other workers, employers' representatives, as well as any other third parties visiting the workplace. The report presents some examples of case-law confirming such responsibility. The report also indicates that anyone who is subject to harassment can ask for judicial protection under Articles 24§1 and 25§1 of the Civil code.

As regards the procedures available, the Committee noted (Conclusions 2014) that the victim of moral (psychological) harassment can file a penal complaint and request the adoption of protection and remedial measures. It asked what procedures before an independent body, other than criminal procedures, were available to victims or moral (psychological) harassment in the workplace in the light of relevant case law examples. On this issue, the report refers to the possibility to seise a civil judge of the matter under Articles 24§1 and 25§1 of the Civil Code (see above) and to invoke a breach of contract under Article 417§3 of the Code of Obligations.

The report also refers to procedures before the Human Rights and Equality Institution. As the implementing regulations of this institution entered into force in 2017, out of the reference period, the Committee asks the next report to provide all relevant information concerning this institution, in particular as regards its independence, as well as regards its functioning in the light of any relevant information and data concerning the moral (psychological) harassment complaints dealt with by this institution and their outcome.

As regards the right not to be retaliated against for upholding the right to protection from moral (psychological) harassment, the Committee asks whether this is covered by the employer's obligation, under Article 417 of the Code of Obligations, to protect victims of harassment from further harm and it asks how this clause has been interpreted in the case-law.

Burden of proof

The Committee notes from the information provided by the report under Article 26§1 that, according to Article 5 of the Labour Law, the employee is responsible to prove that there was a breach of equal treatment by the employer but if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer. The Committee asks the next report to clarify whether this involves a shift in the burden of proof in practice in such proceedings. It also asks whether this applies to all civil law claims brought in respect of moral (psychological) harassment, also under different provisions of the Labour Code, or under Articles 24-25 of the Civil Code and the Code of Obligations.

Damages

The Committee recalls that victims of moral (psychological) harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. Furthermore, victims of moral (psychological) harassment must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to harassment.

As regards compensation, the Committee previously noted (Conclusions 2014) that material and moral damages could be claimed by victims of (sexual or moral/psychological) harassment under Article 49 and 417 of the Code of Obligations, but no details were provided in this respect. The current report indicates that non-pecuniary damage can be claimed also on the basis of Article 24 of the Civil Code and Article 58 of the Code of Obligations, if the harassment behaviour led to the violation of personality rights. However,

the Committee notes that the case-law examples which have been provided do not clarify what redress has been granted to victims in practice and, in particular, whether any ceilings apply to the compensation which can be granted. It asks the next report to clarify this point, in particular as regards moral damages awards.

As regards reinstatement, the Committee noted (Conclusions 2014) that under Article 24 of the Labour Code, victims of (sexual or moral/psychological) harassment have the right to terminate their employment contract and obtain a severance pay corresponding to four months' salary, plus the restoration of the rights they have been deprived of because of the discriminatory treatment. In addition, under Article 20 of the Labour Code, workers who have been unfairly dismissed can request their reinstatement. The Committee asks whether this right applies also when the worker has resigned because of the moral (psychological) harassment suffered, whether the termination of contract has formally taken place invoking Article 24 of the Labour Code or not.

Conclusion

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

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

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

Types of workers' representatives

Trade unions are the main form of employee representation in Turkey. The Committee understands from previous reports that there are also workers' representatives in establishments with less than thirty employees, as well as shop stewards and workers' representatives assigned in works related to health and safety.

In order to obtain a comprehensive picture of the situation, the Committee asks the next report to elaborate on the exisiting types of workers' representatives.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2014), the Committee noted that workers' representatives were protected by law from dismissal and asked how long such protection lasted after the cessation of their functions. In reply, the report states that the protection from dismissal is granted solely for the duration of the representative's mandate. The Committee recalls that the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of their term of office and, accordingly, concludes that the situation is not in conformity with the Charter in this respect.

Furthermore, the Committee has previously asked about protection against detrimental treatment other than dismissal. The report explains that according to Article 25 of the Trade Union and Collective Bargaining Law, the employer shall not discriminate between workers who are members of a trade union and those who are not, or those who are members of another trade union, with respect to working conditions. According to Article 20 of the Law on Occupational Health and Safety, workers' representatives assigned in works related to health and safety, may not be placed at a disadvantage because of their respective activities. The Committee asks the next report to provide more information whether this protection entails all prejudicial acts, such as for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse. It also asks whether all types of workers' representatives, apart from trade union members and representatives in the field of health and safety, are protected against such acts. Meanwhile, the Committee reserves its conclusion on this point.

Facilities granted to workers' representatives

Referring to its Statement of Interpretation on Article 28 (Conclusions 2014), the Committee asked for detailed information on facilities afforded by the employer in order to enable the workers' representatives to carry out their functions efficiently and promptly, specifying that this information should cover means such as premises, materials, technical support or collection of financial contributions. The report 2018 still does not provide a reply to these questions.

Accordingly, the Committee considers that it has not been established that the situation is in conformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 28 of the Charter on the grounds that:

- the protection granted to workers' representatives is not extended for a reasonable period after the expiration of their mandate;
- It has not been established that facilities granted to workers' representatives are adequate.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter. It will therefore only consider recent developments and additional information.

Prior information and consultation

The Committee notes that there has been no change in the legislation over the reference period. In reply to the Committee's question, in addition to the information provided previously, the report explains that under Article 29 of the Labour Code, at least 30 days before any collective redundancy measures for economic, technical, structural or other similar reasons, necessitated by the requirements of the company, establishment or activity, employers must inform the relevant regional labour directorate and the Public Employment Office thereof in writing. This notification must include details of the reason for the planned layoffs, the numbers and groups of employees concerned and the length of time of the termination procedure.

The report also indicates that the national employment office takes the necessary steps to reduce the adverse effects of collective dismissals on employees (counselling, recruitment incentives and support, labour market advice and reintegration services, etc.).

Preventive measures and sanctions

In its previous conclusion, the Committee asked what the updated amount of fines in euros was during the reference period taking account of the latest exchange rates. In reply, the report indicates that employers or their representatives who carry out collective dismissals in breach of Article 29 are fined TRY 693 (€238) per employee.

The Committee notes that the right to information and consultation during collective dismissal procedures is monitored by the Labour Inspection Board, which imposed fines totalling TRY 6 508 009 (€2 153 286) on about 184 employers during the reference period.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 29 of the Charter.