December 2010

European Social Charter (revised)

European Committee of Social Rights
Conclusions 2010
(TURKEY)
Articles 2, 4, 21, 22, 26 and 29
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" 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 2nd report on the application of this treaty to the Council of Europe was 31 October 2009 and Turkey submitted it on 30 March 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Labour rights":

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

Turkey has accepted all provisions from this group with the exception of Article 2§3, 4§1, 5 and 6.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter on Turkey concerns 15 situations and contains:

- 2 conclusions of conformity: Articles 2§7 and 5;
- 2 conclusions of non-conformity: Articles 4§4 and 4§5.

In respect of the other 11 situations concerning Articles 2§1, 2§2, 2§4, 2§5, 2§6, 21, 22, 26§1, 26§2, 28 and 29, 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 fourth 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 opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

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

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.

Labour Act No. 4857 provides that in general terms working time should be a maximum of 45 hours per week. Working time is normally divided equally by the days of the week worked at the establishment. However, Article 63 of the Law permits a certain degree of flexibility as it makes it possible for the parties to agree to spread working hours unequally over a reference period of two months (which can be increased up to four months by collective agreement). In such cases the daily working time must not exceed 11 hours.

The Committee asks whether the regulations in place would allow a worker to work 66 hours (11 hours per day during a 6 day working week) in some of the weeks of the reference period on condition that the average weekly working time has not exceeded 45 hours. It recalls in this respect that weekly working time of more than 60 hours is too long to be considered as reasonable under this provision. This is a limit which cannot be exceeded even in the context of flexibility schemes, where compensation is granted by rest periods in other weeks. Pending clarification on this point, it reserves its position as to whether the situation is in compliance with the Revised Charter.

Overtime is regulated under Section 41 of the Labour Act. It may be performed for such purposes as the general interests of the country or the need to increase output. Employees must consent to overtime work and total overtime work must not be more than 270 hours in a year.

As regards on-call time (readiness to work), Article 66 (c) provides that free periods of a worker who is available for work at the workplace, without necessarily working, are counted as working time. This is in conformity with the Committee´s case-law on this question.

The Committee notes that fines for not complying with the legal requirements on working time - set out in Article 104 - are very low: 100 million to 500 million Turkish Lira (about 50 to 260 Euros). It asks the next report to provide information on the supervision of working time regulations by the Labor Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

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

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.

Under Section 44 of Labour Act No. 4857, matters relating to work carried out on public holidays are governed by collective agreements or employment contracts. If there is no provision on this subject in the relevant agreement or contract, the employee’s consent is necessary. Work performed on a public holiday is paid at twice the standard rate.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary is maintained, in addition to the increased pay rate.

Conclusion

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

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.

Elimination or reduction of risks

The Committee would point out that the first part of Article 2§4 of the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which the states undertake to pursue policies and take measures to improve occupational health and safety and prevent accidents and damage to health, particularly by minimising the causes of hazards inherent in the working environment.

Labour Act No. 4857 and the regulation restricting working hours to 7.5 hours a day for heavy or dangerous work are the main legal instruments governing occupational health and safety issues. The Committee asks for a list of activities regarded as dangerous or unhealthy to be included in the next report.

The Committee refers to its conclusion under Article 3 of the Revised Charter (Conclusions 2009), which describes the dangerous occupations and the measures taken in this regard.

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

Article 2§4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be compatible with the Charter (Conclusions 2005, statement of interpretation of Article 2§4). The Committee asks for the next report to state whether arrangements

such as reduced working hours, additional paid leave or other measures to shorten exposure to risk are provided for by national legislation.

Conclusion

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

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.

Under Section 46 of Labour Act No. 4857, employees covered by this law are entitled to an uninterrupted rest period of at least 24 hours every seven days. Employers must pay a daily wage for the rest day, for which no obligation will lie with the employee to perform compensatory work.

The Committee points out that weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. Although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period. The Committee asks for information in the next report on exceptions to the rules on weekly rest periods.

Conclusion

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

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.

Under Section 8 of Labour Act No. 4857, employment contracts must be prepared in writing for employment relationships of one year or more. If the contract is not in writing, the employer must inform the employee within two months of the working conditions, including, in particular, the working hours, the basic wage and payment dates. If the period of the employment contract is fixed, the employer must provide a written document specifying the length of the contract and the arrangements for termination of the contract.

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. This information must at least cover the essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;

- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the periods of notice required in the event of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.

The Committee asks whether all the above information figures in the employment contracts of employees who have a written contract and whether there are other written sources containing information on the essential aspects of the employment relationship for employees who do not have a written contract.

Conclusion

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

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.

The rules on night work in general are contained in Section 69 of Labour Act No. 4857. The night is understood to be the hours between 8 p.m. and 6 a.m.

Night workers must undergo a medical examination prior to starting night work and receive regular examinations in the course of their employment at least once every two years. Employees are entitled to ask to be reassigned to daytime dutires for reasons of health.

Conclusion

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

Section 41 of Labour Act No. 4857 makes a distinction between “overtime work”, defined as work which exceeds 45 hours a week, and “extra hours”, which is work exceeding the average weekly working time in cases where working time has been set by contract at less than 45 hours per week.

Overtime work is remunerated at an increased rate of 50% of the normal hourly rate and extra hours at an increased rate of 25%. Employees may replace overtime pay with time off (1 hour 30 minutes is granted for each overtime hour worked; 1 hour 15 minutes for each extra hour worked). Employees must use the free time to which they are entitled within six months, during their working time and without any deduction in wages. The Committee finds that these enhanced pay rates and time off in lieu are in compliance with the Revised Charter.

It nevertheless asks if the statutory provisions on payment of overtime apply to all types of work. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.

The Committee notes from another source[1] that overtime payments, even if they include the 50% premium, are sometimes too low because the hourly wage is calculated wrongly. Wages have a monthly basis. To calculate the hourly wage, the monthly figure should be divided by 225 according to the law but companies sometimes divide by 300. Workers often cannot work out this misleading calculation because it may be covered up in complicated presentations of the figures. It therefore asks the next report to provide information on whether the Labour Inspection has identified any breaches related to the failure to pay overtime wages.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 4§2 of the Revised Charter.

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[1] *Overtime and excessive overtime, Joint Initiative for Corporate Accountability and Workers´Rights, July 2005*

Article 4 - Right to a fair remuneration

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

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4§3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4§3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as

taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Turkey to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

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.

It also notes that this is the first time the situation has been considered under Article 4§4 of the revised Charter.

Indefinite contract

Section 17 of Labour Act No. 4857 establishes a basic minimum in terms of notice for termination of employment but individual contracts of employment may provide for more favourable periods of notice. It is therefore possible to end an employment relationship by complying with the following periods of notice:

- two weeks for employees with fewer than six months' service;
- four weeks for employees with between six months' and one-and-a-half years' service;
- six weeks for employees with between one-and-a-half years' and three years' service;
- eight weeks for employees with over three years' service.

The Committee also notes that it is possible to replace notice by the payment of an amount equivalent to what the worker would have earned during the corresponding period of notice. Nevertheless, the Committee has already considered that a eight weeks' notice is not reasonable for an employee who has worked over fifteen years in the same company (Conclusions 2007, France). The minimum term of eight weeks mentioned above is therefore not in conformity with the article 4§4.

Immediate dismissal

Section 25 of the Labour Act states that it is possible for the employer to immediately end a contract for health reasons concerning the employee and for immoral, dishonourable or malicious conduct or other similar behaviour on the part of the employee. It is therefore possible to immediately dismiss an employee if:

- he or she has deliberately contracted an illness or been injured and is as a result absent for three successive days or for more than five working days in any month;

- the Health Committee has decided that the employee is suffering from an incurable illness and is therefore incapable of performing his or her duties;
- it transpires that the employee has made false declarations with regard to his or her qualifications prior to recruitment;
- the employee, through words or deeds, offends the honour or dignity of the employer or of a member of the employer's family;
- the employee sexually harasses another colleague or the employer;
- the employee threatens the employer or a member of the employer's family or another colleague;
- the employee discloses a trade secret;
- the employee commits an offence on the business premises for which he or she may be imprisoned for seven or more days;
- the employee is absent without the employer's permission or a good reason for two consecutive days, or twice in one month, on the day following a holiday, or three times in any month; and
- the employee, through negligence or wilfully, damages any material or equipment and the damage cannot be offset by the deduction of a month's wages.

The Committee notes that under the Appendix to Article 4§4 the only exception to the principle of a reasonable period of notice provided for in the revised Charter concerns immediate dismissal for a serious offence. It therefore asks for details concerning the reasons for immediate dismissal, in particular which body has authority to rule on such decisions and the national case law concerning cases of immediate dismissal.

Termination of employment other than through dismissal

Article 4§4 does not only concern cases of dismissal but also applies to all cases of termination of employment. The Committee asks that the next report contain information concerning other cases of termination of employment, for example on account of the employer's death, bankruptcy or incapacity for work.

Employees' leave of absence to seek new work

The Committee also asks whether workers are entitled to absent themselves from work during their notice period

Probationary period and part-time employees

Finally, the Committee also considers that the right to reasonable notice in the event of termination of employment applies to all categories of employee irrespective of their status, including those in unusual employment relationships. It also applies to probationary periods and concerns part-time workers and those on fixed-term or piece-work contracts. National legislation must cover all workers.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 4§4 because eight weeks' notice is not reasonable in the case of employees who have been working in the same company for fifteen years or more.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee takes note of the information in the Turkish report.

The Committee previously found (Conclusions XVIII-2) that the situation was not in conformity with Article 4§5 because not all workers were protected against deductions from their wages which could deprive them of the minimum subsistence level. Article 4 of the Labour Code lists areas in which workers are not covered by the Labour Code but by special legislation or the Code on Obligations. These are:

- sea and air transport;
- farming and forestry undertakings employing fewer than 50 workers;
- building work on family-run farms;
- domestic work;
- apprenticeship;
- sport;
- rehabilitation work;
- companies employing three people or fewer.

According to the report, employees in the agricultural and forestry sector employing fewer than 50 workers may draw up a collective agreement and thus be protected by labour legislation. To ensure that all employees are protected against excessive wage deductions, the Committee asks for the next report to provide an exhaustive list of categories of workers not covered by the Labour Code and the special regulations protecting them.

The Committee notes that deductions from wages must not exceed ¼ of the employee's wages plus any maintenance allowances owed by employees to their families. In addition, employees who believe that there have been unreasonable or unfair deductions from their wages may appeal to a court against the decision. The Committee wishes to know what national case-law there is on wage deductions and what rules the courts apply to protect employees in this respect.

The Committee points out that under Article 4§5 domestic legislation must contain safeguards to ensure that employees do not waive their right to limits to deduction from their wages (Conclusions 2005, Norway). It asks that the next report provide further information on the guarantees which ensure that workers do not waive their right to limits to deductions from their wages.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the revised Charter because it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

Article 21 - Right of workers to be informed and consulted

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

Scope

Article 21 of the revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 21 of the revised Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 21 of the revised Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT) and Others*, Case C-385/05)).

The Committee asks for information on the scope of Turkish legislation and in particular asks what are the different types of worker representatives in Turkey, whether workers may be represented in all enterprises irrespective of size and how are workers informed where there are no worker representatives.

Material scope

The report provides information on the right of workers to be informed and consulted in case of collective dismissals. The Committee notes that this is relevant to Article 29 of the Charter and refers to its conclusion under Article 29 in this respect. The report also refers to the right of workers, or worker representatives to be informed on matters relating to occupational health and safety. However it contains no information on other matters that workers or their representatives must be informed and consulted on. The Committee asks the next report to indicates on which other matters workers or their representatives are entitled to be informed or consulted.

Remedies and Supervision

The Committee recalls that the rights to information and consultation must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article. The Committee asks for information on remedies and sanctions.

Conclusion

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

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. It observes that the information provided which is essentially on occupational health and safety at work fails to address many issues of relevance to this provision.

The Committee underlines that workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, i.e. the determination and improvement of the working conditions, work organisation and working environment; the protection of health and safety; and the organisation of social and socio-cultural services and facilities within the undertaking. The workers' right to take part in the determination and improvement in these areas implies that workers may contribute, to a certain extent, to the employer's decision making process (Conclusions 2007, Armenia).

The Committee emphasises that Article 22 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia). It has considered as in conformity with this provision a situation where, in undertakings employing less than 10 people, employees were in direct contact with the employer.

Should the next report fail to provide information on these questions as well those raised below, there will be nothing to establish that the situation is in conformity with Article 22 of the Revised Charter.

Working conditions, work organisation and working environment

According to the Regulation on Yearly Leave, a Leave Committee composed of one representative of the employer and two representatives of workers will be established in undertaking with more than 100 workers. The responsibilities of the Leave Committee include: submitting to the employer for approval a paid-leave table; preparing a leave table which takes into account the working time, continuation of work, and number of workers in the undertaking; arranging camps and travels for yearly leave times, etc. In undertakings with less than 100 workers, the responsibilities of this committee will be taken over by the employer and a representative of the workers. The Committee asks whether there are other ways of involving workers in decision-making regarding other aspects of working conditions, work organisation and working environment.

Protection of health and safety

As far as occupational health and safety is concerned, pursuant to Section 80 of Labour Act No. 4857, in establishments considered as industrial under this law with more than fifty employees and where work has been performed for more that six months, employers must establish an occupational health and safety committee. These committees are composed, *inter alia*, of the employer or his representative, technical staff responsible for occupational safety, a union representative, and a health and safety representative of workers. These committees will establish draft occupational health and safety regulations to be approved by the employer; follow up the implementation of these regulations; evaluate health and safety risks and indicate specific measures to face them; plan occupational health and safety training, etc. The Committee notes that these

committees only operate in a restricted number of undertaking and asks how the right of workers to take part in decision-making on health and safety matters is ensured in undertakings not covered by Section 80 of the Labour Act.

Organisation of social and socio-cultural services and facilities

The Committee asks whether workers can participate in the organisation of social and sociocultural services in their undertaking, where such services exist.

Enforcement

The Committee stresses that workers must have legal remedies when their right to take part in the determination and improvement of their working conditions and environment is not respected (Conclusions 2003, Bulgaria). There must also be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2003, Slovenia).

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.

Liability of employers and means of redress

Labour Law No. 4857 provides for the employee's right to terminate the employment contract in case when the employer harasses the employee sexually or in case when the employee was sexually harassed by another employee or by third persons in the establishment and the employer has failed to take adequate measures, although being informed of such conduct. If an employee sexually harasses another employee, the employer has the right to terminate the employment contract without having to comply with the prescribed notice period.

The Committee has ruled that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It understands that the term "third persons" include the above categories and it asks the next report to confirm if this understanding is correct. It also asks for a detailed description of the liability of employers in the above-mentioned cases.

Besides the right to termination of employment contract, the protection against sexual harassment must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. The report mentions the possibility for the employee to file a lawsuit for unlawful termination of employment contract. The Committee asks that next report informs on how the right to appeal, the right to adequate compensation and the right not to be retaliated against are guaranteed.

Burden of proof

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The report contains no information in this regard. The Committee asks that the next report informs about the situation regarding the burden of proof.

Damages

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.

The report states that in case of termination of contract as described above, the employee has the right to get a severance payment. The Committee asks for information on the existence of other remedies, if any.

Prevention

Under Article 26§1, States Parties are required to take adequate preventive measures against sexual harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies. States must conduct information, awareness-raising and prevention campaigns in the workplace or in relation to work. As this information is not included in the report, the Committee asks for it to appear in the next one. It particularly asks for information on any preventive measures for example awareness-raising about the problem of sexual harassment in the workplace.

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.

Liability of employers and means of redress

Labour Law No. 4857 provides for the employee's right to terminate the employment contract in case when the employer morally harasses the employee or in case when the employee was morally harassed by another employee or by third persons in the establishment and the employer has failed to take adequate measures, although being informed of such conduct. If an employee morally harasses another employee, the employer has the right to terminate the employment contract without having to comply with the prescribed notice period.

The Committee has ruled that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered moral harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It understands that the term "third persons" include the above categories and it asks the next report to confirm if this understanding is correct. It also asks for a detailed description of the liability of employers in the above-mentioned cases.

Besides the right to termination of employment contract, the protection against moral harassment must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. The report mentions the possibility for the employee to file a lawsuit for unlawful termination of employment contract. The Committee asks that next report informs on how the right to appeal, the right to adequate compensation and the right not to be retaliated against are guaranted.

Burden of proof

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The report contains no information in this

regard. The Committee asks that the next report informs about the situation regarding the burden of proof.

Damages

Victims of moral 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.

The report states that in case of termination of contract as described above, the employee has the right to claim compensation from the employer. The Committee asks for information whether this compensation includes reparation for pecuniary and non-pecuniary damage.

Prevention

Under Article 26§2, States Parties are required to take adequate preventive measures against moral harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies. As this information is not included in the report, the Committee asks for it to appear in the next one. It particularly asks for information on any preventive measures for example awareness-raising about the problem of moral harassment in the workplace.

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.

Article 28 entitles workers' representatives to protection in the undertaking and certain facilities. It complements Article 5, which grants a similar right to trade union representatives (Conclusions 2003, Bulgaria).

According to the appendix to Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore institute various categories of workers' representatives other than trade union representatives, or both. Representation may be exercised, for example, through workers' commissioners, works councils or workers' representatives on the undertaking's supervisory board (Conclusions 2003, Bulgaria).

Protection of worker representatives

According to Section 18 of Labour Act No. 4857 an employer, "who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service." Further it provides that acting or having acted in the capacity of, or seeking office as, a union representative shall not be regarded as being a valid reason. Article 30 or the Trade Unions Law 2821 provides that ″No employer shall terminate the employment contract of shop stewards or trade union representatives working in his establishments unless he indicates clearly and precisely a just cause for termination. The shop steward or his trade union shall have the right to lodge an appeal with the competent labour court within one month of the date the notice of termination is communicated to him. The court shall apply fast hearing procedures and conclude the case within two months. The decision of the court shall be final".

The Committee notes that under the Trade Unions Act any change to workplace or the work of a trade union representative requires the written approval of the trade union representative, but also that the report refers to Section 22 of the Labour Act which does not appear to grant worker representation any specific protection. It asks for the details of the greater protection afforded to worker representatives

The Committee asks whether worker representatives who are employed in establishments with less than thirty employees or who have less than 6 months seniority have any protection.

Facilities to be afforded to worker representatives

The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses and asks the next report to provide all the necessary information.

Conclusion

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

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.

Collective redundancies are regulated by Labour Law No. 4857.

Definitions and scope

According to the report, collective redundancies are categorised as such when the work contracts of:

- a minimum of 10 employees, in enterprises employing between 20 and 100 employees, or
- a minimum of 10 percent of employees, in enterprises employing between 101 and 300 employees; or
- a minimum of 30 employees, in enterprises employing 301 and more workers, are to be terminated on the same date or at different dates within one month.

The collective termination of contracts is made for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity.

The Committee notes that provisions regulating collective redundancies do not apply in the case of seasonal and "campaign" work. It asks what is understood by the term "campaign" and if there are any other categories of employees that do not fall under the scope of rules governing collective redundancy procedures.

Prior information and consultation

When the employer contemplates making collective redundancies, he has to provide the union representatives, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended redundancies. The written communication includes the reason for the contemplated redundancies, the number and groups to be affected as well as the length of time the procedure is likely to take.

Consultations with union representatives take place after the notification and deals with measures that need to be taken to avert or to reduce the redundancies as well as measures to mitigate or minimize their adverse effects. A proces verbal on the consultations is drawn up at the end of the meeting.

Notices of termination take effect 30 days after the notification of the regional directorate of labour concerning the intended redundancies.

In the event of closing down of the entire enterprise which involves a definite and permanent stoppage of activities, the employer notifies, at least 30 days prior to the intended closure, only the regional directorate of labour and the Public Employment Office and posts the relevant announcement in the enterprise facilities.

Sanctions and preventive measures

The report explains that in case of failure of employer to apply the provisions on collective redundancies the employee may file suit, but it contains no information on the sanctions applied.

The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers.

The Committee asks what sanctions are applied and what preventive measures does the Government take with a view to mitigating the effect of collective redundancies and reducing their occurrence.

Conclusion

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