



European  
Social  
Charter

Charte  
Sociale  
Européenne



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## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2012

(TURKEY)

Articles 1, 9, 10, 15, 18, 20, 24 and 25  
of the Revised Charter

*This text may be subject to editorial revision.*



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.<sup>1</sup>

*The European Social Charter (revised) was ratified by Turkey on 27 June 2007. The time limit for submitting the 4th report on the application of this treaty to the Council of Europe was 31 October 2011 and Turkey submitted it on 15 February 2012. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Articles 1§2 and 18§3. The Government did not submit a reply. Comments on the report from Kaos GL and ILGA (European Region) were registered on 30 March 2012.*

This report concerned the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Turkey has accepted all Articles from this group.

The reference period was 1 January 2007 to 31 December 2010 for Articles 1, 9, 10§§1 to 4 and 18 and 1 August 2007 to 31 December 2010 for Articles 10§5, 20, 24 and 25.

The present chapter on Turkey concerns 20 situations and contains:

- 7 conclusions of conformity: Articles 1§3, 9,10§§1,2 and 3, 18§§1 and 4;
- 7 conclusions of non-conformity: Articles 1§§1 and 2, 18§§2 and 3, article 20, 24 and 25

In respect of the other 6 situations concerning Articles 1§4, 10§§4 and 5, article 15§§1, 2 and 3, the Committee needs further information in order to assess the situation. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision

The next Turkish report deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),

- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2012.

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

## **Article 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

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

### **Employment situation**

The Committee notes from the report that GDP growth rate in Turkey grew from 4.7 % in 2007 to 8.9 % in 2010 (despite a contraction of 4.8 % in 2009).

The employment rate, whilst remaining very low, increased slightly, from 41.5 % in 2007 to 43.0 % in 2010.

The unemployment rate showed a moderate increase between 10.3 % (2007) and 11.9 % (2010). Youth unemployment also increased moderately during the reference period, from 20.0 % in 2007 to 21.7 % in 2010, whilst the long-term unemployment rate<sup>1</sup> (as a percentage of all unemployed persons) remained stable, standing at 26.1 % in 2010.

The Committee considers that the labour market situation in Turkey is mixed : whilst there continues being a sustained growth of the economy, this has still not been translated into a significant increase of the employment rate, which persists being very low. Moreover, unemployment levels also remain high, despite having been maintained with moderate increases.

### **Employment policy**

The report states that the reference period was characterised by the taking of measures to minimise the impact of the economic crisis, namely the adoption of two employment packages. The first one includes measures to reduce burdens on employers (reduction of employers' contributions, simplification of procedures, etc.), the second, on the short time working allowance as an important tool to protect employment. The Committee asks for a clarification on the nature of this allowance, and more generally on the effectiveness of both these employment packages.

It also mentions that a National Employment Strategy has been prepared to tackle the more structural problems of the labour market, and with a view to enhancing employability, supporting entrepreneurship, adapting to changing conditions, and facilitating access, particularly of disadvantaged groups such as women and young people to the labor market. Specific goals to be achieved by 2023 have been set, for example, to reduce the unemployment rate to 5 % or provide vocational training to 400.000 people each year.

The report provides no information on what active labour market measures are available in general to jobseekers (besides reference to two programmes to promote youth employment and an Action Plan on vocational training). Despite repeated requests, it also fails to provide information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed. Furthermore, it contains no data as regards expenditure on active labour market policies (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. As the report contains no information on these matters, the Committee considers that there is nothing to show that employment policies have been adequate in tackling unemployment and in job creation.

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks the next report to also indicate whether employment policies are monitored and how their effectiveness is evaluated.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and in promoting job creation.

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<sup>1</sup>*Eurostat*

## **Article 1 - Right to work**

*Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

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

### **1. Prohibition of discrimination in employment**

The Committee recalls that it has previously noted that under Article 10 of the Constitution all individuals are equal before the law without discrimination based on language, race, colour, sex, political opinion, philosophical belief, religion, sect or any other similar ground. Article 5 of the Labour Code (Law No. 4857), on the "principle of equal treatment", prohibits all discrimination on the same grounds.

The Committee previously noted that discrimination on the grounds of age and sexual orientation did not figure in the list of grounds of prohibited discrimination. It has repeatedly asked whether the said "any other similar ground" includes these two grounds for discrimination and what measures have been taken to combat these types of discrimination.

The current report fails to provide any confirmation that these are protected grounds. Furthermore the Committee notes that the report states that there have been no cases concerning any form of discrimination before the courts. The Committee therefore concludes that Turkey has failed to demonstrate that persons alleging discrimination in particular on grounds of age or sexual orientation are adequately protected and more widely that the protection against discrimination on the grounds required by the Charter is adequate and finds that the situation is not in conformity with the Charter.

It notes that according to an EU accession report comprehensive anti-discrimination law is still lacking and Lesbian, gay, bisexual and transgender persons (LGBT) continued to suffer discrimination, intimidation and violent crimes. (Extract from the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2011-2012", COM(2011)666 final).

In addition it notes from submissions received from the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) (ILGA) on the 4th National Report by Turkey on the implementation of the revised European Social Charter quoting the Council of Europe's Human Rights Commissioner's Report comments: "In Turkey, Article 17 of the appendix of the Armed Forces Health Regulation, 55 states that gay men are "unfit to serve" in the army. Therefore there is a ban on LGBT persons from serving in the armed forces. The Committee asks for the Government's comments on this.

The Committee notes that a Bill on establishing a Committee for Equality and Fight against Discrimination has been drafted, further a task Force on the Fight against Discrimination will be established in order to assist the drafting of a framework law prohibiting discrimination in line with the EU acquis. The Committee asks to be kept informed of all developments in this respect.

The Committee previously noted that under the Labour Code, employment relationships may only be terminated for valid reasons (Article 18) and provides that the prohibited grounds of discrimination listed in the Code are not considered to be valid reasons. However the Committee noted that this Article restricts protection to employees with an indefinite-term contract and a length of service of at least six months, working in a company with over 30 employees. The Committee asked what protection is provided for employees on fixed-term contracts or with fewer than six months' service or those working for a company with fewer than 30 employees. The report states that collective agreements provide protection to those in undertakings employing less than 30 employees. However insufficient information is provided as to how those on fixed term contracts or with fewer than six months service are protected against dismissal on discriminatory grounds. The report simply refers to the Turkish Code of Obligations. The Committee repeats its request for this information.

Previously the Committee considered that the situation was not in conformity with the Charter since, with the exception of cases where discrimination is connected with membership or non-membership of a trade union, there is an upper limit on the compensation awarded to employees who have suffered discrimination of up to 8 months wages. The Committee finds that the information provided does not indicate that there has been any change. The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

The Committee also found previously that the situation was not in conformity because nationals of other parties to the Charter are excluded from several categories of employment (Conclusions XVI-1 and 2008); restrictions on access to occupations including that of doctor, dentist, pharmacist, ophthalmologist and veterinarian, newspapers editor still apply. The Committee notes from the information in the report that there has been no change to this situation.

The Committee has repeatedly requested information on the rules governing the vetting of certain categories of staff of public bodies and institutions to obtain information on any ideological or subversive activities they may be involved in. The report does not contain any information on these rules. The Committee emphasises how essential such rules are to provide a legal framework for vetting and ensure that it does not result in discrimination against certain categories of person. It therefore repeats its request.

## **2. Prohibition of forced labour**

The Committee found previously that the situation was not in conformity with Article 1§2 because, under certain provisions of Martial Law No. 1402/1971 as amended by Act No.4045/1994 (Section 2) and Act No. 23935/1983, it was possible to suspend or transfer civil servants or local government employees on the ground that their employment posed a threat to security in general, law and order or public safety.

The Committee was of the view that, because of the imprecise manner in which it is described, this circumstance cannot be considered to fall within the scope of Article G of the Charter (Conclusions 2008). No further information was provided on this issue. Therefore the Committee concludes that the situation is still not in conformity with the Charter.

The Committee has found previously that the situation was not in conformity with Article 1§2 because under Article 1467 of the Commercial Code, captains may use force to ensure that their ship is properly run and discipline is maintained. It notes that according to the report and the information provided to the Governmental Committee<sup>1</sup>, a new Commercial Code is being drawn up and that this article will no longer be included. However, as it was still in force during the reference period, the Committee concludes again that the situation is not in conformity with Article 1§2 of the Martial law and state of emergency legislation.

### **Prison work**

The Committee recalls it noted previously that convicted prisoners may work in workshops or work centres and are paid wages of an amount set by the prison authorities. Prisoners cannot be forced to work. According to the report working prisoners are insured under the social security and health care scheme.

For other matters relating to prison work not dealt with above, the Committee refers to its statement of interpretation and to its questions in the General Introduction.



### ***Coercion in connection with domestic work***

The Committee again draws attention to the existence of forced labour in domestic environment. It refers to its statement of interpretation and question in the General Introduction.

### ***3. Other aspects of the right to earn one's living in an occupation freely entered upon***

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008).

The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

### ***Minimum periods of service in the armed forces***

The Committee highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.

### ***Privacy at work***

The right to privacy is guaranteed and protected by the Constitution, by the Penal Code and Civil Code. In addition Labour Law No 4857 provide that either party to an employment contract may repudiate the contract in case of breach of privacy. The Committee asks whether there are other remedies available to an employee who has had his right to privacy breached at work. The Committee refers to its statement of interpretation and question in the General Introduction.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 1§2 of the Charter on the grounds that

- there is insufficient protection against discrimination in employment, in particular on grounds of age and sexual orientation.
- the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- restrictions on access of nationals of other States Parties to several categories of employment are excessive;
- under Martial Law, it is possible to suspend or transfer civil servants and local government employees because their employment posed a threat to security in general, law and order or public safety;
- the Commercial Code authorised during the reference period the captain of a ship to use force to bring sailors back on board, even in cases where there is no threat to the safety of the vessel.

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<sup>1</sup> see report of Governmental Committee on Conclusions 2008 T-SG (2010)6).

## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

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

It notes that a Regulation on Domestic Job Placement Services was published in the Official Gazette on 25 April 2009. One of the novelties introduced is the possibility of accessing services provided by the Employment Office (IŞKUR) through the Internet.

In its previous conclusion (Conclusions XIX-1) the Committee found that the situation in Turkey was not in conformity with Article 1§3 of the Charter because notification of vacancies by employers to IŞKUR was subject to the payment of a fee.

The present report indicates that no fee is charged by IŞKUR from employers who seek workforce from this organisation. The Committee considers that this clarification brings the situation into conformity with the Charter. It nevertheless asks the next report to indicate the legal basis where it appears that services provided by IŞKUR to employers and employees are free of charge.

The total number of vacancies notified to IŞKUR rose from 186,922 in 2007 to 368,636 in 2010. The placement rate decreased from 59.5% in 2007 to 55.6% in 2010 (111,375 were persons placed through IŞKUR in 2007 and 205,231 persons in 2010).

The report indicates that the total number of staff in IŞKUR was 3,189 persons, including both the central offices and those in provincial organisations. The rate of personnel who hold higher education certificates is 80%. The Committee asks how many persons are involved in placement activities, and the ratio of placement staff to registered jobseekers.

The report states that a new Regulation on Private Employment Agencies was adopted in 2008. Private agencies are obliged to forward to IŞKUR on a regular basis statistics on vacancies, jobseekers, placements or any other information on request. Their activities are licensed and supervised by IŞKUR. At the end of 2010 there were 445 private employment agencies in operation.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 1§3 of the Charter.

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As Turkey has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are examined under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational guidance and training of workers (Articles 9 and 10§3), is in conformity with the Charter.

However, it deferred its conclusion on education and training for persons with disabilities (Article 15§1) because of lack of information.

### *Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 9 - Right to vocational guidance**

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

As Turkey has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

In its last conclusion, the Committee found the situation not to be in conformity on the ground that it had not been established that the right to vocational guidance in the education system was guaranteed. In the last conclusions, the Committee has noted a considerable decline in the number of beneficiaries of vocational guidance in the education system (from 14.9 million in 2001, to 6.4 million in 2004, to a mere 68,207 beneficiaries in 2005).

### ***Vocational guidance within the education system***

The Committee takes note of the information regarding harmonising of legislation. According to the report, the Regulation on Psychological Counseling and Guidance of the Ministry of National Education (MEB) published in the Official Gazette no. 24736, dated 17.04.2001 was amended by the Regulation published in the Official Gazette no. 27169 dated 14.03.2009. Its Article 8 stipulates that “every student is granted guidance and psychological counseling services with a view to making his/her own choice of occupation, direct himself/herself towards a job that is most suitable for himself/herself and being prepared for work life and employment.” These services are designed in accordance with the following:

- services are regarded as a process and supplied at the beginning of pre-school and primary education.
- the stage of the student’s development and his/her individual characteristics are taken into account.
- updated information about the characteristics of the student, labour market, occupations and the ways to acquire professions is systematically supplied to the student and his/her parent/custodian.
- the student cannot be forced to make a choice on a specific vocational area or occupation.

The Committee takes note of the activities carried out during the reference period. It notes that there has been a steady increase throughout the reference period in the number of teachers, parents and custodians and students that have participated in vocational guidance seminars. In relation to its previous conclusion, the Committee notes, in particular, that the number of beneficiaries in the education system has increased considerably. In 2008, there were 631 293 students participating in vocational guidance seminars; in 2009, there were 2 317 859 students; and in 2010, there were 2 206 865 students. Also, in 2010, there were 15 049 teachers involved in guidance and psychological counseling services.

The Committee takes note also of the measures taken in primary and secondary education with the aim of improving vocational guidance services as described in the report.

The Committee considers that the efforts of the government to improve the situation seem to have produced an effective result. The Committee considers that on this ground the situation is in conformity with Article 9.

### ***Vocational guidance in the labour market***

The National Employment Organisation (İŞKUR) has 64 Vocational Information Service units, 61 Vocational Counseling Service units and 79 Job Counseling Service units and assists persons who are about to choose an occupation, want to develop their professional skills, desire to change their occupation or job and who experience difficulty in job-searching.

The Committee takes note of the categories of beneficiaries as well as the duties of staff engaged in vocational guidance services. It notes that there has been a steady increase in the funds allocated to vocational guidance services in labour market. In 2010 there were 438

500 TL (187 000 €) allocated for this purpose. During the reference period, there were 94 vocational counselors. Also, in 2010, there has been a total of 372 067 beneficiaries of vocational guidance services in the labour market and a steady increase throughout the reference period.

The Committee considers that the funds allocated are rather low and asks how these funds are used in order to meet the need for vocational guidance.

*Conclusion*

Pending receipt, the Committee concludes that the situation in Turkey is in conformity with Article 9 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Technical and vocational training; access to higher technical and university education*

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

#### ***Secondary and higher education***

The Committee takes note of the legal changes that have taken place during the reference period as well as the measures included in the national plans and programmes on vocational training, as described in the report.

The Committee notes that in 2010, there have been 593 955 students participating in vocational and technical higher education and 8 925 teachers teaching in the respective institutions. The Committee takes note of the organisation and functions of the Vocational Qualifications Authority. It notes also, from the reply in the report, that the unemployment rate at national level among higher education graduates was 11%.

The total public expenditure for courses and programmes organized by the National Employment Organisation (ISKUR) in 2010 was 392 644 000 TL (167 710 000 €) and 211 627 persons participated in these activities.

From the indicated figures the Committee understands that the report makes reference only to vocational and technical training in a narrow definition of the terms. The Committee recalls that the notion of vocational training of Article 10§1 covers: initial training – i.e. general and vocational secondary education – university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under paragraph 3 of the Charter (see *infra*). University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession. The Committee therefore asks that next report contain information as to all the above mentioned parts of vocational training.

#### ***Measures to facilitate access to education and their effectiveness***

The Committee recalls also that facilities other than financial assistance should be granted, based on individual aptitude. This obligation can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The Committee asks that next report provide information whether registration fees and other costs in public education system are affordable by the majority of students and what measures are there in place for categories of students that cannot afford these costs. It asks also that next report provide information on the system of recognition and transferring of knowledge.

#### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 10§1 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

The report states that the Bylaw on Issuing Vocational Certificates in Vocational Branches for which Apprenticeship Training is Not Applicable was published in Official Gazette no. 26757, dated 14 January 2008 and was put into force. The Committee asks what are the branches that the bylaw excludes from apprenticeship.

The Committee understands that there are two main programmes of apprenticeship organised by the Turkish Tradesman and Craftsmen (TESK) and the Apprenticeship and Vocational Education Centres.

The Committee takes note of the apprenticeship programme organised by TESK. It notes from the report that TESK members contribute 5% of their gross revenues to this programme and apprenticeship may continue from 2 to 3 years. The Committee asks that next report provide the number of beneficiaries under this programme.

It notes from the report that the budget allocated to Apprenticeship and Vocational Education Centres in 2010 was 19 261 886 TL (8 227 000 €)(not including staff costs). In the curriculum year of 2008/2009 there were 314 junior apprentices, 133 658 apprentices and 57 700 "headworkers" that participated in the Apprenticeship and Vocational Education Centres programmes.

The report states that apprentices are not subject to discrimination, such as sex or disabilities. However the Committee wishes to know what the situation is in regard to equal treatment of foreign apprentices, nationals of Parties to the Charter. It asks whether there is any kind of restrictions to the right to carry out an apprenticeship, applied to them on the ground of nationality.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 10§2 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

The Ministry of National Education provides vocational training, among other, also to adult workers. Training is provided in 969 public education centres. The report states that the Decree with power of law on the organisation and duties of the Ministry of National Education, of 14 September 2011, has brought forth the restructuring of the ministry to better meet the needs of vocational training in the country.

The National Employment Organisation (ISKUR) is responsible for vocational training and retraining of adult workers. The Committee takes note of the activities organised by ISKUR in the form of vocational training courses, entrepreneurship courses, on-the-job trainings and social work programmes, as described in the report.

It notes from the report that funds of 511 million TL (219 281 580 €) and 509 million TL (218 403 158 €) were made available for Active Labour Programmes, run by ISKUR, by the decision of the Council of Ministers in 2009 and 2010 respectively. A total of 211 627 individuals benefited from Active Labour Programmes in 2010 for which a fund of 392 644 000 TL (167 710 000 €) was allocated. Out of the 211 627 participants, 156 584 of them benefited from the courses, 42 066 benefited from social work programmes, 8 306 benefited from entrepreneurship courses and 4 671 participants benefited from on-the-job training programmes.

In its last conclusion, with relation to the unemployed, the Committee asked what percentage of all participants in various training courses found a job afterwards. In reply, the report states that 23% of the unemployed persons who participated in the courses organised by the ISKUR within the scope of the Active Labour Programmes were placed in a job in 2010.

The Committee asks that next report provide figures of the adult employed and unemployed participants in the vocational training and retraining activities.

### *Conclusion*

The Committee concludes that the situation in Turkey is in conformity with Article 10§3 of the Charter.



## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

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

This is the first time that Turkey reports on Article 10§4 of the Charter.

The Committee takes note of the Strategic Plan of the National Employment Organisation (ISKUR) and the project "On Increasing Labour Market Intermediary Activities for the Purpose of Employment of the Long-Term Unemployed". It takes note of the activities carried out under this project.

The Committee recalls that in accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed. The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment. Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1.

The Committee asks that next report provide a description of the types of training and retraining measures available, the number of persons in this type of training, the total number of long-term unemployed during the reference period and the impact of the measures on reducing long-term unemployment.

### *Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 10 - Right to vocational training**

### *Paragraph 5 - Full use of facilities available*

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

The report states that, pursuant to the Act No. 3308, the Employment and Vocational Training Committees were established in the provinces with the participation of relevant ministries and social partners. Provincial Employment and Vocational Training Committees and Central Vocational Training Committee develop, assess and implement vocational training policies at local and country levels respectively.

### ***Fees and financial assistance***

The report states that minor contribution to training and some fees are charged for the participants of the vocational training services provided by the TESK. Besides, a contribution may be charged to cover training costs for the courses organised within the scope of vocational training of occupational development organised for adults by occupational associations. The amount of the contribution may change in accordance with the duration of the course and the cost. The TESK annually determines the fees to be charged for the examinations of the participants of the occupational certificate examinations organised by the chambers. The examinations fees charged in the year 2010 were: 7, 50 Turkish Lira (3, 2 €) for the provinces for priority development and 15 Turkish Lira (6,4 €) for other provinces. The participants in labour force training courses receive 15 Turkish Lira (6,4 €) pocket money for each actual course day they attend in addition. Work accident and occupational disease insurance premiums are covered.

The report states that, according to Section 25 of the Act No. 3308, the education given in Vocational Education Centres of the General Directorate of Apprenticeship and Non-Formal Education of the Ministry of National Education is free of charge and the Ministry covers insurance expenses of the apprentices. In addition, lunch expenses of the apprentice students who receive education in Vocational Education Centres are covered by the State.

Also, in compliance with the Constitution, vocational education given in the state schools are free of charge and according to Section 25 of the Act No. 3308 the insurance expenses of candidate apprentices, apprentices and students who receive vocational training in enterprises are covered by the Ministry. Lunch expenses of the apprentice students who receive training in Vocational Education Centres are covered by the state.

In its last conclusion, the Committee asked whether the existing system of financial aid, including various types of grants allows students from low-income families to sufficiently cover their expenses relating to higher education. The report contains no answer as to this question. The Committee therefore reiterates its question.

### ***Training during working hours***

The report states that in accordance with Section 20 of the Act No. 3308, training duration of the students who receive vocational training is included in their working time.

### ***Efficiency of training***

The report states that preparing and updating the programmes applied in Vocational Education Centres of the Ministry of National Education are conducted in co-operation with the social partners. Also, the Ministry signed a protocol with the Ministry of Industry and Trade and the TESK on 12 February 2009 with a view to organising vocational courses for employment and mass vocational training activities for occupational improvement of tradesmen and craftsmen and their employees, and put it into effect throughout the country.

### *Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 1 - Vocational training for persons with disabilities*

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

No current data is available neither on the total number of persons with disabilities nor the number of persons with disabilities of 0-18 years of age. In order to assess the effective access to education and vocational training for persons with disabilities, the Committee wishes to be informed in the next report on these data.

### **Definition of disability**

The report does not give a definition of disability. The Committee asks the next report to provide such a definition.

### **Anti-discrimination legislation**

The Committee recalls that under Article 15§1, the Committee considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two (Conclusions 2007, Statement of Interpretation on Article 15§1).

According to the report, Article 10 of the Constitution stipulates a form of affirmative action in favour of the persons with disabilities. The Committee wishes to be informed on this action.

The report indicates that the word 'disability' has been added to Article 122 of the Turkish Criminal Code under the section on "Discrimination" since the entry into force of Law No. 5378 on Persons with Disabilities, dated 7 July 2005. The Committee wishes to have further information on this anti-discrimination legislation and its implementation in relation to disability and education. Meanwhile, it reserves its position on this point.

### **Education**

The report states that the Constitution protects the education of those in need of special education due to their condition through governmental measures that render these latter beneficial to society (Article 42).

The report makes then reference to Law No. 5378 on Persons with Disabilities, which came into force on 7 July 2005. This Law contains notably provisions on the education and vocational training of the persons with disabilities. For example the changes introduced by this Law are: a tax exemption on tools and equipment produced specifically for the training, professions, and daily life and the insertion of the word 'disability' in the Article of the Criminal Code on discrimination as mentioned above.

Furthermore, the report details the measures taken to implement the legal framework concerning education. These measures consist in several projects.

The first project mentioned in the report concerns the free access to schools and institutions of students in need of special education. This project aims at ensuring their free access to schools and equal opportunity as well as encouraging them to study. For the academic year 2009-2010, a fund that amounted to 43,640,182 TL (18,963,867.18 EUR) was allocated to 31,982 students.

The second project is called Life-Long Learning Strategy and Document of Turkey and Life-long Learning Action Plan for the period 2009-2013 and aims at ensuring that individuals in

need of special education receive vocational training and skills that lead up to employment. The activities that are being performed within the frame of this project are notably:

- adaptation of current educational programs and equipment to the requirements of the individuals in need of special education;
- reorganization of the educational environment;
- raising knowledge and awareness of the staff employed in the institutions providing non-formal education services.

The third project is 'Turkey without Disabilities', which establishes across Turkey a one day contact meeting between the related public service administrators, non-governmental organizations and the disabled persons with their relatives. The target is to raise awareness among 8.5 million disabled persons and give inter alia information about education and vocational training.

The Committee welcomes these initiatives and wishes to be informed on their outcome in the next report.

The Committee recalls its case law, according to which "Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools". According to the report, for the academic year 2009-2010 there were 1136 special education institutions with 7579 teachers for 61 801 students with disabilities. In order to assess the effective access to education for persons with disabilities, the Committee asks the next report to indicate the number of persons with disabilities in mainstreaming education, including higher education.

### ***Vocational training***

Here again, the report makes reference to Law No. 5378 on Persons with Disabilities mentioned above. Section 13 of this Law is titled 'Vocational Rehabilitation' and includes new regulations on notably:

- developing vocational training that are well-suited to the conditions of the disabled person;
- the right of the disabled persons to choose their profession in accordance with their skills;
- enabling the disabled persons to take advantage of the vocational rehabilitation services;
- taking measures to develop the skills of the disabled persons in private vocational rehabilitation centres, skill improvement centres and various workshops;
- providing vocational rehabilitation services through municipalities.

With regard to private vocational rehabilitation centres the report indicates that the regulation governing it entered into force on 2 May 2006. It regulates the procedures and the principles on the opening, inspection and operation of these centres. The aim of these centres is to enable disabled persons to be efficient in a profession and to secure their economic and social welfare.

In relation to vocational training, the report mentions a project titled General and Vocational Training Activities for the Disabled. The Ministry of National Education promotes the social integration of students in need of special training in the educational system. Thus, future teachers follow various trainings on the approach, attitude and directing of people with disabilities. The individuals requiring special training follow their vocational training during secondary education together with their counterparts with no disabilities. If this is not possible, these persons are educated in the special training schools and institutions affiliated

to the Directorate General of Special Training Guidance and Counselling Services (DGSTGCS) of the Ministry of National Education.

According to the report, business schools opened in accordance with the Regulation on Special Training Services gives the opportunity to individuals that have completed their primary education and that are below the age of 21 and in need of special education to continue their education in these schools where they also receive vocational training. The study period is four years and the students who graduate are granted a business school diploma, which is equal to the secondary education diploma. However, this diploma does not provide the right to higher education. The report indicates that 82 business schools offer education for people with mental disabilities and 2 of these are adapted for visually-impaired persons.

The Committee wishes to be informed in the next report on the number of persons with disabilities in vocational training, including higher education.

#### *Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

According to Article 50 of the Constitution "No one shall be required to perform work unsuited to his age, sex and capacity. Minors, women and persons with physical or mental disabilities shall enjoy special protection with regard to working conditions." The report then quotes Article 61 of the Constitution, which provides that "The State shall take measures to protect the disabled and secure their integration into community life."

The report states that in 2010 there were 32,257 persons with disabilities employed in both the public and private sectors. The report, further, indicates that in 2010 there were 18,787 persons with disabilities employed as civil servants. The Committee wishes to know whether these figures correspond to ordinary employment, sheltered employment or to both and asks the next report to indicate separately the number of persons with disabilities in ordinary employment and in sheltered employment. In order to better assess the employment of persons with disabilities, the Committee asks the next report to provide the number of working age persons with disabilities.

### ***Anti-discrimination legislation***

The Committee recalls that under Article 15§2, legislation must prohibit discrimination on the basis of disability in employment (Conclusions 2003, Slovenia) as well as the dismissal on the basis of disability. In addition, there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease. (Conclusions 2007, Statement of Interpretation on Article 15§2).

In relation to discrimination, the report makes reference to the Regulation on Domestic Job Placement Services, dated 25 April 2009, which provides that:

- no upper limit shall be introduced to the disability degree and no discrimination shall occur against any disability group;
- no discrimination shall be imposed against disabled persons during the recruitment, notably at the stages of job choosing, designing the application forms, selection process, technical assessment, suggested working periods and conditions;
- there shall be no segregative treatment against disabled persons;
- the workplace shall be designed with a view to facilitating the employment of disabled persons and supplying disabled-friendly jobs, taking necessary measures for their health, employing them in jobs compatible with their profession, improving their knowledge and skills, supplying necessary equipment for their work, and fixing the working hours in accordance with the situation.

This Regulation provides that an administrative fine shall be imposed on employers failing to fulfil their obligations concerning the employment of disabled persons.

Section 14 of the Law No. 5378 on Persons with Disabilities that entered into force on 7 July 2005 prohibits discrimination in relation to the employment of persons with disabilities. In case of breach of this Section, Article 122 of the Turkish Criminal Code provides for a penalty.

The Committee welcomes this legislation and, in order to assess its effectivity, wishes the next report to indicate how it is implemented in practice. In relation to the obligation on

reasonable accommodation, the Committee also asks the next report to explain how this obligation is implemented in practice.

### ***Measures to encourage the employment of persons with disabilities***

First concerning the private sector the report states that according to Section 30 of the Labour Law (LL) No. 4857, employers shall employ at least 3% of persons with disabilities if two conditions are fulfilled: 50 or more workers are employed in the workplace and the persons with disabilities have appropriate qualifications for the profession, and physical and mental condition. In case of breach of this Section, the Law imposes fines, collected under Section 101 and used for professional training and rehabilitation, business set-up as well as supportive technologies that facilitates job search. The report, further, indicates that the Council of Ministers has introduced incentives concerning insurance premiums for employers hiring more disabled persons. Thus, employers' shares of insurance premium concerning disabled persons employed in the private sector pursuant to Section 30 of the LL and those employed in sheltered workplaces pursuant to Section 14 of the Law No. 5378 on Persons with Disabilities are paid by the Treasury. Similarly, 50% of the employers' shares of insurance premium are also paid by the Treasury when disabled workers are employed over the quota or there is no obligation to employ disabled persons.

As to the public sector, the report mentions Section 53 of Civil Servants Law No. 657, which provides that public institutions and agencies are obliged to employ 3% of disabled persons in positions entering within the scope of this Law. Furthermore, the report makes reference to the Regulation on Procedures and Principles Regarding the Recruitment of Workers at Public Agencies and Organisations that entered into force on 9 August 2009 and covers provisions on the recruitment of workers, including the disabled persons, in public agencies and organisations. This Regulation provides that:

- there shall not be a stipulation excluding disabled persons;
- there shall not be an upper limit to the disability degree and discrimination against any disability group;
- examinations for persons with disabilities shall take place in an appropriate environment;
- the questions of the examination shall take into account their disability;
- one of the members of the committee in charge of the entrance exam shall belong to the Confederation of the Turkish Disabled Persons.

The report also indicates that the fourth meeting of the Council of Disabled Persons was held in Ankara from 16 to 20 November 2009 and focused on the theme of Employment.

Finally, the report makes reference to the Improved Employment Strategy and Vocational Rehabilitation Project for the Disabled. This project was realised within the framework of "MATRA Pre-accession Project Programme" in cooperation with the Netherlands during the EU accession process. The project was implemented in Izmir, a pilot province, between 2007 and 2008. The persons with disabilities were placed at the top of the employment agenda. The Committee wishes the next report to precise the outcome of this Project.

### ***Conclusion***

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.



## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

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

The report states that Turkey has ratified the United Nations Convention on the Rights of Persons with Disabilities on 3 December 2008. According to Article 90 of the Constitution the Convention is a part of the national law.

### ***Integration and participation of persons with disabilities in the life of the community***

The report makes reference to the Circular of the Prime Ministry No. 2009/12, published in the Official Gazette dated of 3 July 2009 that contains provisions on the right of persons with disabilities to independence, social integration and participation in the life of the community.

### ***Anti-discrimination legislation and integrated approach***

The Committee recalls that Article 15§3 requires the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated. (Conclusions 2007, Slovenia).

According to Law No. 5378 on Persons with Disabilities that entered into force on 7 July 2005 all forms of discrimination against disabled persons are prohibited. In case of breach of this Law Article 122 of the Turkish Criminal Code provides for a penalty.

The report, however, makes reference to a Project on Fight against Discrimination on the Basis of Disability. This project has been implemented by the Administration for Disabled Persons in cooperation with the Human Rights Authority of the Prime Ministry within the frame of the EU Program on Employment and Social Solidarity Program (PROGRESS) dated of 2009. This project comprises the "Survey on the Measurement of Discrimination on the Basis of Disability", which has been implemented with a view to contributing to the strategies on the fight against discrimination and to fact-based policy-making. The platform for sharing the survey results was organized in November 2010 in Ankara with the participation of public authorities and social partners. According to the report, this Project gave also rise to 1000 symposium books and CDs, 1500 books on the survey and 200 research CDs, which were distributed to the relevant agencies and organizations.

### ***Consultation***

The Committee recalls that under Article 15§3, people with disabilities should have a voice in the design, implementation and review of a coherent policy in the disability context. (Conclusions 2003, Italy).

The Committee wishes to be informed on how disabled persons are represented and consulted in governmental bodies at national and local level.

### ***Forms of financial aid to increase the autonomy of persons with disabilities***

The report gives a few examples of financial aids:

- in 2010, there were 16,091 persons benefiting from tax credit due to a disability;
- in 2010, there were 288,926 persons benefiting from institutional or home care services that amounted to 1,529,158,788 TL (670,969,926.40 Euros);
- in 2010, there were 3,662 disabled persons that received the allowance for the needy.

The Committee asks the next report to provide further details on all benefits and other forms of financial assistance available to persons with disabilities.

## ***Measures to overcome obstacles***

### ***Technical aids***

The Committee recalls that under Article 15§3 technical aids must be available either for free or subject to a contribution towards their cost (Conclusions 2007, Finland).

The report being silent, the Committee asks the next report to provide information on technical aids.

### ***Communication***

The Committee recalls that under Article 15§3 telecommunications and new information technology must be accessible (Conclusions 2005, Estonia, p 188) and sign language must have an official status (Conclusions 2003, Slovenia). The Committee asks for the next report to explain how telecommunications and new information technology are accessible. It also wishes the next report to state what the legal status of sign language is.

### ***Mobility and transport***

The report states that there is a Pilot Project on Model Disability-Friendly Cities aiming at extending modern practices of accessibility via best practices, informing the public and enhancing the public awareness.

With regard to publications on transport the report cites a "Guide to improving transport for people with mobility disability" and "Improving accessibility for all – Guide to good practice". Both guides were prepared by the European Conference of Ministers of Transport, then translated and published by the Administration for Disabled Persons in 2008. These guides gather alternative solutions from different countries for the executive institutions working in the transport sector.

### ***Housing***

The report mentions a Project on Model Disability-Friendly Higher Education Dormitories carried out by the Administration for Disabled Persons and the General Directorate of Higher Education Allowances and Dormitories Institution focusing on accessibility. A higher education dormitory has thus been picked up as a model and modified with regard to accessibility.

Regarding accessibility improvements, the report refers to the legislation concerning public works and the Law on Persons with Disabilities, which provides for the modernisation of existing standards such as the "TS 9111 Rules for the Adjustment of the Buildings Settled for Persons with Disabilities".

Furthermore, the report mentions a revision of the "TS 12576 Rules for the Planning of Urban Roads – Structural Precautions in Streets, Avenues, Squares and Roads for the Disabled and the Elderly" that has been launched in cooperation with the Turkish Standards Institution and the Ministry of Internal Affairs.

With regard to publications on technical aids, the report stresses that in 2009 and 2010 were published the first and second editions of a technical handbook for local administrations on "Basic information about accessibility", which contain basic norms and standards on necessary adjustments for persons with disabilities for the use of technical staff of municipalities.

The Committee asks that the next report provide more information on housing.

### ***Culture and leisure***

With regard to sport, the report states that the General Directorate of Youth and Sports in cooperation with the Sports Federations of Persons with Disabilities has planned to construct a sports complex suitable to any group of disabled persons.

As to cultural activities, the report indicates that the accessibility and enjoyment of services have been made possible thanks to the coordinated effort of the Administration for Disabled Persons and the Ministry of Culture and Tourism. In this context, the Draft Cultural Action Plan for Persons with Disabilities has been set up in 2008 and a Protocol has been signed between the General Directorate of State Theatres and the Administration for Disabled Persons staging disability-themed dramas. Besides, according to the Law No. 2022 persons with disabilities receive an allowance to enjoy various cultural activities free of charge such as museums or National Parks.

Finally the report gives a few examples:

- the "Home delivery books" project that exists since 2006 and consists in providing books for the disabled persons in 20 provinces;
- the "Speaking library sections" that exist in 13 provinces and provide cultural publications support for visually-impaired persons.

### *Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

### ***Foreign population and migratory movements***

The Committee asks for information regarding inflows of foreign workers.

### ***Work permits***

The Committee notes from the report that amendments were introduced to Law No 4817 on Work Permits of Foreigners which facilitates the delivery of work permits by allowing electronic application. The Foreign Workers Automation Project was initiated on 2 August 2010.

Moreover, according to the report, by the amendment introduced on 28 April 2011 a scanned version of required documents can be forwarded by email to the Ministry of Labour and Social Security instead of hard copies.

### ***Relevant statistics***

According to the report in 2010 out of 18,289 applications for work permits 1,669 were refused, thus the refusal rate amounted to 9%. The Committee notes that the refusal rate is low.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 18§1 of the Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

#### ***Administrative formalities***

##### ***Issue of residence permits for the purposes of work***

In its previous conclusion (Conclusions 2008) the Committee held that the situation in Turkey was not in conformity with the Charter as there was a dual application procedure for work and residence permits. The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2010) §177-182) that measures had been taken to increase cooperation between the Ministry of the Interior and the Ministry of Labour and Social Security with regard to applications for residence and work permits. According to the representative of Turkey, the residence permit is an important complementary element to the work permit. The work and residence permit are tied together.

The Committee further notes from the report that work permits which were to be signed by the deputy director general in the Ministry, may, since 2009, be signed by heads of sections.

According to the report, there are new regulations on one-stop-shop for work and residence permits in the new draft Law on Foreigners which is elaborated by the Ministry of Interior. Article 27 of the draft law entitled 'work permit regarded as residence permit' envisages that a valid work permit shall be considered as a residence permit.

The Committee observes that there have been a number of improvements, such as the possibility to apply for a work permit using an electronic form. However, it notes that amendments envisaging a one-stop-shop for work and residence permits have not been enforced during the reference period, thus maintaining the dual system for granting of work and residence permits. Therefore, it maintains its previous finding of non-conformity on this issue.

#### ***Waiting times***

According to the report work permit applications are processed and finished within 30 days. In its previous conclusion the Committee asked what was the average time to process a residence permit application. In this regard the report states that foreigners who come to Turkey with a work permit should get their residence permit within 30 days following their date of entry and before they start to work. Those who are already in a possession of a residence permit will have it renewed within 15 days following its expiry.

#### ***Chancery dues and other charges***

The Committee notes from the report that as regards fees for residence permits, for the first month the fee amounts to Turkish lira 77,85 (€ 33) while for three months to Turkish lira 181,45 (€ 78). One year long residence permit costs Turkish lira 647,85 (€ 282). However, different rates apply to different countries. The Committee asks what is the reason.

The Committee recalls that States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. In the opposite case, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

For this reason, the Committee, while recognising that the cost of the residence permit and its renewal is not excessive, asks Spain to provide information in the next report on the measures eventually adopted in view of reducing them.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the ground that there is a dual procedure for obtaining work and residence permits.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

### **Access to the national labour market**

In its previous conclusion (Conclusions 2008) the Committee asked whether there were any plans to relax the rules governing access to self-employment for foreign workers.

It notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2010)5 §192) that legislation had been adopted by the Parliament during the reference period removing restrictions on self-employment of foreigners. However the legislation had not been approved by President and was therefore before the Parliament again. The draft legislation, inter alia, abolishes the 5 year residence requirement for persons wishing to engage in a self-employed activity where they should demonstrate the creation of 10 new jobs on the Turkish market. The Committee wishes to be kept informed on the *iter* of adoption of the draft legislation. However, it notes that in the reference period Turkey has not liberalised its regulations governing access to self-employment of foreign workers. Therefore, it holds that the situation is contrary to the Charter.

In its previous conclusion the Committee asked what were the practicalities of granting work permits in relation to market conditions, economic trends and sectorial developments. The report states that according to Article 13 of the Law No 4857 on the Work Permits of Foreigners, the Ministry of Labour and Social Security assesses the work permit applications taking into consideration the opinions of authorities concerned in relation to the situation in the labour market. According to the 'evaluation criteria that the applicant businesses and foreigners are obliged to meet in regard to work permit requests of foreigners', a number of conditions should be met, such as, for instance the amount of wage to be paid to a foreigner, the paid-up capital of the enterprise who is hiring the foreigner as well as its turnover and total exports.

The Committee asks for information in the next report about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. Such information shall concern the category of dependent employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

### **Exercise of the right of employment / Consequences of job loss**

In its previous conclusion the Committee held that the legislation which forced foreign workers to work for the same employer for three years and in the same sector of activity for six years was contrary to the Charter. It now asks whether in case a foreigner wants to change the employer during the first three years, he/she is obliged to leave the country and re-apply for visa, work permit and residence permit.

The Committee notes that the report does not provide any information regarding the situation whereby a foreign worker loses his job while his/her residence permit is still valid. In the absence of any additional information from the Government in reply to the supplementary questions, the Committee holds that it has not been established that foreign workers do not lose their residence permit in case they lose a job.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that:

- rules governing self-employment of foreign workers have not been liberalised;

- it has not been established that a residence permit of a foreign work who loses his/her job is not automatically revoked.



**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

*Paragraph 4 - Right of nationals to leave the country*

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

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2008) found to be in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in Turkey is in conformity with Article 18§4 of the Charter.

## **Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination**

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

### ***Equal rights***

Article 10 of the Constitution *inter alia* guarantees equality between the sexes.

Article 5 of the Labour Law No 4857 prohibits discrimination between the sexes; in concluding an employment contract, in conditions of employment and in terminating a work contract. It further provides for equal pay for work of equal value. The Committee asks whether indirect discrimination is also covered.

It would appear that discrimination in recruitment by public employment agencies has been prohibited by Circular Note of the Prime Minister in 2004. The Committee asks whether a similar prohibition exists in recruitment by private bodies.

The Committee notes that according to the report the employment of women in underground or underwater positions such as mines, cabling sewerage or tunnel construction is prohibited. The Committee finds that such a prohibition is not in conformity with the Charter.

The Labour Law also provides for a shift in the burden of proof in sex discrimination cases.

The Committee understands from the report those who have been dismissed on grounds of sex are only protected against unfair dismissal where they had indefinite labour contract with at least six months service and are employed at a business employing thirty or more workers. The Committee finds that this situation is not conformity with the Charter.

It appears to the Committee that compensation for breach of the non-discrimination principle is limited to a sum equivalent to 4 months wages. The Committee recalls its case law in this respect: it considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The Committee seeks clarification of the position.

The Committee asks whether domestic law makes provision for comparisons of pay and jobs to extend outside the company directly concerned where this necessary for an appropriate comparison. It refers to its statement in the General Introduction in this respect

The Committee asks the next report to provide details of gender discrimination cases before the courts.

### ***Specific protection measures***

The Committee recalls that measures relating to the protection of maternity are examined under Article 8 and 27 of the Charter (see Conclusion 2011).

### ***Position of women in employment and training and Measures to promote equal opportunities***

The female participation rate in the labour market increased from 26% in 2009 to 27.6% in 2010. The Committee asks for detailed information in the next report on the gender pay gap.

The report provides details of the measures taken to increase and improve the situation of women on the labour market, including the establishment of a "National Council for Monitoring and Coordination of the Employment of Women" and a Commission for Equal Opportunities, incentives for employers to hire women, increased provision of child care facilities, vocational training of women etc. In addition A Gender Equality National Action plan (2208-2013) is in place, as well as an Active Labour program project and Promoting Women's Employment Operation.

However the Committee notes from other sources<sup>1</sup> that despite certain efforts on the part of the Government there is a very low rate of female employment. The Committee asks to be kept of all developments in the situation.

#### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 20 of the Charter on the grounds that:

- the employment of all women in certain underground or underwater occupations is prohibited;
- Women who do not have an indefinite labour contract with at least six months service and who are not employed at a business employing thirty or more workers are not protected by the prohibition of dismissal on grounds of sex.

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<sup>1</sup>*Committee for the Elimination of All Forms of Discrimination Against Women, Concluding Observations Turkey 2010; Commission of the European Union Progress report Turkey 2012.*

## **Article 24 - Right to protection in case of dismissal**

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

*Article 24 of the Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:*

- *the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.a and the Appendix to Article 24);*
- *penalties and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.b).*

### **Scope**

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation. However, exclusion of employees from protection against dismissal for six months or 26 weeks in view of probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus).

The Committee asks whether any categories of workers can be excluded from the protection against dismissal.

### **Obligation to provide a valid ground**

The Committee recalls that under Article 24 the following are regarded as valid reasons for termination of an employment contract: *reasons connected with the capacity or conduct of the employee and certain economic reasons.*

The Committee notes that termination of employment is covered by Chapter 2 of the Labour Law No 4857. The Committee further notes that the Code of Obligations (CoO) no. 818 is applicable to the employees and the jobs which are out of the scope of the Labour Law. The Committee asks which categories of workers fall under the Code of Obligations.

The Committee notes that according to Article 18 of the Labour Law the employer, who terminates the contract of an employee engaged for an indefinite period must have 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.

As regards termination of employment on economic grounds, the Committee wishes to know the national courts' interpretation of the law and their leading decisions and judgments as regards the extent to which reasons are regarded in practice as justifying dismissal. It asks whether the courts have the competence to review a case on the facts underlying the economic reasons or just on points of law.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term 'termination of employment' means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or

conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee asks how the legislation complies with this approach.

### **Prohibited dismissals**

*The Committee recalls that a series of Charter provisions require increased protection against termination of employment on certain grounds:*

- *Articles 1§2, 4§3 and 20: discrimination;*
- *Article 5: trade union activity;*
- *Article 6§4: strike participation;*
- *Article 8§2: maternity;*
- *Article 15: disability;*
- *Article 27: family responsibilities;*
- *Article 28: worker representation.*

*Most of these grounds are also listed in the Appendix to Article 24 as non-valid reasons for termination of employment. However, the Committee will continue to consider national situations' conformity with the Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely "filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" and "temporary absence from work due to illness or injury".*

As regards the first ground, the Committee considers (Conclusions 2003, Statement of Interpretation on Article 24) that national legislation should include explicit safeguards against termination of employment on this ground. Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, States must be able to show how national legislation conforms to the requirement of the Charter. The Committee notes that according to Article 18 of the Labour Law the filing of a complaint or participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative or judicial body is not considered as valid ground for termination of employment.

As regards temporary absence from work due to illness or injury, the Committee recalls that under Article 24 a time limit can be placed on protection against dismissal in such cases. Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases.

As regards temporary absence due to illness, according to Article 25 the employer may end the contract in cases of illness or accident, which is not attributable to the employee's fault, if recovery from the illness or injury continues for more than six weeks beyond the notice periods set in the Labour Law.

The Committee asks what is the overall time limit that is set on protection against dismissal because of temporary absence from work due to illness or injury. In the meantime, it reserves its position on this point.

The Committee notes that according to Article 18 of the Labour Law the filing of a complaint or participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative or judicial body is not considered as valid ground for termination of employment.

### ***Remedies and sanctions***

The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee.

According to Article 20 of the Labour Law the employee who alleges that no reason was given for the termination of his/her employment contract or who considers that the reasons shown were not valid to justify the termination, shall be entitled to lodge an appeal against such termination with the labour court within one month of receiving the notice of termination. The burden of proof that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer. The court must apply fast-hearing procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month.

The Committee notes that according to Article 21, if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation should be paid in the amount not less than the employee's four months' wages and not more than his eight months' wages.

The Committee considers that the situation is not in conformity with the Charter as the maximum amount of compensation in case of unlawful dismissal is inadequate.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 24 of the Charter on the ground that the maximum amount of compensation in case of unlawful dismissal is inadequate.

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

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

*Article 25 of the Revised Charter guarantees the right of individuals to their wages and other payments arising from the employment relationship in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution. However, the Committee wishes to emphasise that the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.*

The Committee notes from the report that Article 33 of the Labour Law No 4857 entitled "Insolvency of the employer" which entered into force on 10 June 2003, states that in case of the employer's inability to pay, a Wage Guarantee Fund (WGF) shall be established within the Unemployment Insurance Fund with a view to meeting the employees' wage claims for the last three months arising from the employment relationship.

The WGF has been established to pay the salaries of workers of the last three months, applicable in cases where the employer is adjudged unable to satisfy any just claims or "he/she is adjudged bankrupt".

The WGF is financed through 1% of the annual sum of the unemployment insurance contributions paid by employers.

The Committee also takes note of the Regulation on Wage Guarantee Fund, prepared pursuant to the amendments introduced by the Law no. 5763, which came into force 28 June 2009. Provisions of the new Regulation are applied to insured persons covered by the Unemployment Insurance Law no. 4447, dated 25 August 1999. In Article 4 entitled "Definitions" of the Regulation, the terms i.e. the date of becoming insolvent, the base wage and the wage claim are defined.

Article 9 of the Regulation, entitled "Procedures and Principles Regarding the Payment" states that the "Worker Claim Record" must cover the period prior to the employer's becoming insolvent and the employee must have worked in the same workplace for at least one year immediately preceding the employer's becoming insolvent.

The Committee holds that exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter. Therefore, it holds that the situation is not in conformity with Article 25.

The Committee recalls that under Article 25 the protection afforded in case of insolvency must be adequate and effective. According to the Appendix to the Charter, the workers' claims covered by this provision shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to termination of employment. Besides, the workers' claims for holiday pay due as well as the amounts due for other types of paid absence shall not be less than three months under a privilege system and eight weeks under a guarantee system.

The Committee asks whether the workers' claims other than monthly wage are also covered by the Guarantee Fund.

The Committee also takes note of Bankruptcy and Enforcement Law (BEL) no 2004. According to Articles 206 and 207 of the BEL workers' claims are privileged and come immediately after public claims and pledged claims. Article 317 of the same Law states that the Ministerial Cabinet may allow the debtors to pay off their debts over an extended period of time in states of emergency such as economic crisis, however, postponement of this

nature and extending period of settlement in discharging debts shall not be applied to payment of wages.

The Committee recalls that under Article 25 of the Charter States have a margin of appreciation as to the form of protection of workers' claims and both a specific guarantee institution as well as a system of privileges are acceptable under the Charter, provided that the protection afforded is adequate and effective.

The Committee understands that both systems i.e. a privilege system and a guarantee system operate in Turkey. It asks what categories of workers are covered under privilege (the BEL) and guarantee (WGF) systems. It also asks what is average duration of the period when a claim is lodged until the worker is paid. The Committee also asks whether under a privilege system workers' claims are protected in cases where employer's assets are insufficient to justify the opening of formal proceedings.

#### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 25 of the Charter on the ground that employees having worked for less than one year for the same employer are excluded from protection against insolvency.