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European Social Charter (revised)

European Committee of Social Rights

Conclusions 2013

(TURKEY)

Articles 3, 11, 12, 13, 14, 23 and 30
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.

Information on the Charter and the Committee as well as statements of interpretation and general questions formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter (revised) was ratified by Turkey 27 June 2007. The time limit for submitting the 5th report on the application of this treaty to the Council of Europe was 31 October 2013 and Turkey submitted it on 24 May 2013. On 4 April 2013, a letter was addressed to the Government requesting supplementary information regarding Article 23. The Government submitted its reply on 18 October 2013. Comments on the report from Pembe Hayat, Kaos GL, Transgender Europe, and ILGA-Europe were registered on 11 June 2013.

This report concerned the accepted provisions of the following articles belonging to the 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).

Turkey has accepted all of the Articles from this group.

The reference period was 1 January 2008 to 31 December 2011.

The present chapter on Turkey concerns 19 situations and contains:

– 9 conclusions of conformity: Articles 3§1, 3§2, 11§3, 12§§2 to 4, 13§2, 13§3 and 13§4.

– 7 conclusions of non-conformity: Articles 3§3, 3§4, 11§2, 13§1, 14§1, 14§2 and 23.

In respect of the other 3 situations concerning Articles 11§1, 12§1 and 30, 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 Committee consequently asks the Government to comply with its obligation to provide this information in its next report on the articles in question.

The next report from Turkey deals with the accepted provisions of the following articles belonging to the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),

- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for the report was 31 October 2013.

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

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations

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

General objective of the policy

The Committee previously examined (Conclusions 2009) the legal framework and the general objective of Turkey's occupational health and safety policy. It asked for information on whether the policy aims at fostering and preserving a culture of prevention in respect of occupational health and safety; whether occupational risk prevention is incorporated into the public authorities' activities at all levels and forms part of other public policies (on employment, persons with disabilities, equal opportunities, etc.); and whether the policy is regularly assessed and reviewed in light of changing risks.

The report states that Act No. 6331 of 20 June 2012 on occupational health and safety, which entered into force after the reference period, will set out a permanent review of health and safety conditions; develop a prevention policy in the workplaces; set out risk assessment at every step of the production process; include information to workers about the risks they face at the workplace; and institute an occupational health and safety official. ILO Convention No. 155 on Occupational Safety and Health (1981) is in force.

In reply to the Committee's request, the report states that on the basis of analysis of occupational accidents and diseases data, evaluation of the national policy under Policy Document I for 2006-2008, and discussion of corporate structure, good practices and education during the first National Occupational Health and Safety Strategy Workshop held on 27-28 November 2010, the National Occupational Health and Safety Policy Document II for 2009-2013 (Policy Document II) was set up. It aims at decreasing the occupational accident rate by 20% and fostering and preserving a culture of prevention. The Ministry of National Education and the Ministry of Labour and Social Security (MoLSS) co-operate to integrate this approach into teaching and training programmes.

The Committee takes note of this information. It notes the existence of a policy which aims at fostering and preserving a culture of prevention as regards occupational safety and health. It also notes that Act No. 6331 will offer a comprehensive approach to occupational health and safety based on risk prevention, but that it had not reached the implementation stage during the reference period. It therefore asks for detailed information in the next report on this new legislation. It also reiterates its question relating to whether the policy is regularly assessed and reviewed in light of changing risks.

Organisation of occupational risk prevention

The Committee previously examined (Conclusions 2009) the organisation of occupational risk prevention at national and company levels. It asked for information on whether labour inspectors and the Labour Inspection Board (LIB) have a duty to share, as part of prevention activities (information, education, prevention), their knowledge about occupational hazards and risk prevention acquired at inspection visits.

The report states that a project on Improving Occupational Health and Safety Conditions in Workplaces was started on 11 March 2010, rising awareness on health monitoring, occupational health and safety management systems and consultation and training services to enterprises, by training some 1 000 workers from the mining, construction and metallurgy sectors.

In reply to the Committee's request, the report states that, in accordance with Act No. 4857 of 22 May 2003 on labour, Act No. 3146 of 9 January 1985 on the organisation and duties of the Ministry of Labour and Social Security, and Policy Document II, the LIB identifies sector-specific hazards and drafts national and workplace-targeted policies. During the reference period, guides, handbooks and brochures on risks specific to underground and overland mining, construction work, pressurised gas cylinders, working at height were made available on the internet and published for distribution to the social partners, to universities and to organised industrial zones. The "guide to labour inspection" was amended in 2011 to integrate preventive inspection, improve communication with social partners, and target inspection visits at construction sites, mines and organised industrial zones. In 2011, the LIB also drafted safety reports and emergency plans under Ministry of the Environment and Urbanisation Regulation No. 27676/2010 on the control of major industrial accidents, and conducted studies on the context of inspection visits at petrochemical plants. Under Policy Document II, the LIB analysed occupational accident reports, statistic data, and provided training to employers' and workers' representatives during inspection visits.

The Committee takes note of this information. It notes the existence, at national and territorial level, of measures for the prevention of occupational risks suited to the nature of the risks, together with measures of information and training for workers. It also notes that the LIB and territorial labour inspectorates participate in developing an occupational health and safety culture among employers and employees and in sharing knowledge acquired during inspection activities. It asks for information in the next report on how small and medium-sized enterprises discharge their obligations to assess work-related risks and adopt preventive measures geared to the nature of risks in practice.

Improvement of occupational safety and health

The Committee previously examined (Conclusions 2009) Turkey's measures to improve occupational health and safety. It asked for concrete examples of training and advice undertaken or authorised by the Directorate General for Occupational Health and Safety (DGOHS), and information on whether quality assurance (professional accreditation, certification systems for facilities and equipment) is available; on activities organised during the Occupational Health and Safety Week, and on conference and seminar events held during the reference period.

The report states that the Ministry of Health has been restructured in accordance with Legislative Decree No. 663 of 2 November 2011 on the establishment and duties of the Ministry of Health and its Affiliated Institutions, and the Workers' Safety and Occupational Health Unit was established to train personnel of cleaning services, office and technical personnel on waste management on the use of chemicals, hygiene, and ergonomics. The Ministry of Health developed education programmes and teaching material on safety education, safety harmonization training, and biosafety training.

In reply to the Committee's request, the report states that the Occupational Health and Safety Week involved public bodies, universities and non-governmental organisations in the examination of good practices during technical visits to prominent undertakings, and the dissemination of occupational health and safety knowledge by panel discussions on specific issues, seminars and theatre performances. The report lists various projects such as establishing a laboratory to test individual protective equipment; hosting the 19th World Congress on Safety and Health at Work on 11-15 September 2011; standardizing research, measurement and analysis procedures in regional laboratories of the Occupational Health and

Safety Centre (İSGÜM). Under the Transformation in Health Programme, the Performance Management and Quality Development Department conducted studies of the quality of health institutions in accordance with five dimensions, among which the safety of the patient and the worker.

According to the report, the İSGÜM is the only MoLSS body in charge of setting measurement standards and carrying out, through a network of laboratories, measurements, technical tests and applied research on substances, workplaces and gear. The İSGÜM also provides training on safe work and occupational health and safety to teachers and students of vocational and technical schools; staff of dust combat units in mines; construction supervisors and controllers; physicians; and representatives of social partners. According to another source,¹ the MoLSS Training and Research Centre for Labour and Social Security (ÇASGEM) also offers training on occupational health and safety for professionals and related groups.

The Committee takes note of this information. It notes the existence of a system aimed at improving occupational health and safety through scientific and applied research, development and training, in which public authorities are involved. However, the examples provided in the report are largely limited to the Ministry of Health, and no answer is given to the request for examples of training and counselling conducted by the DGOHS. The Committee therefore reiterates its request in that respect. It also asks that the next report states the respective competencies of İSGÜM and ÇASGEM within the national system, as well as on the resources allocated to the mentioned institutions and bodies.

Consultation with employers' and workers' organisations

The Committee previously examined (Conclusions 2009) the consultation of the social partners in the design and implementation of Turkey's occupational health and safety policy. It asked for information on the functioning and remit of the National Occupational Health and Safety Council (NOHSC) in connection with prevention policies in the matter.

In reply to the Committee's request, the report states that inspection visits were carried out in co-operation with social partners, and Policy Document II was prepared by the NOHSC. The first National Occupational Health and Safety Strategy Workshop involved public bodies, universities, and non-governmental organisations.

At national level, the social partners are represented in the Tripartite Advisory Board provided for under section 114 of Act No. 4857 of 22 May 2003 on labour and Regulation No. 25423 of 4 April 2004 on the Tripartite Advisory Board, which were in force during the reference period. The Tripartite Advisory Board issues non-binding opinions and recommendations on labour-related issues including occupational health and safety. The report indicates that the social partners were consulted in drafting Act No. 6331.

At company level, in accordance with section 80 of Act No. 4857 and section 5 of Regulation No. 25489 of 11 June 2004 on occupational health and safety boards, enterprises of the industrial sector with at least 50 employees must set up occupational health and safety boards which are consulted on work organisation and methods; occupational accidents and diseases; personal protective equipment; and training at the workplace. The report indicates that the occupational health and safety boards were taken up in Act No. 6331 and their remit was extended.

The Committee takes note of this information. It notes that social partners are consulted in the design and implementation of the occupational health and safety policy. It reiterates its request for information on the functioning and remit of the NOHSC as a body separate from the

Tripartite Advisory Board. It also asks for information on workers' representation in undertakings with less than 50 employees.

Conclusion

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

¹<https://osha.europa.eu/en/oshnetwork/focal-points/turkey>

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Risks covered by the regulations

The report provides extensive information on the legal framework to protect workers against the following occupational risks: establishment, alteration and upkeep of workplaces; chemical, physical, biological, and carcinogenic substances and agents; specificities in the maritime, construction, agriculture, transport and mining sectors; asbestos and ionising radiation. It is pointed out that in most cases, adopted laws and regulations took account of the relevant EU law. A number of specific examples are provided.

New regulations on occupational health and safety entered into force during the reference period. They notably refer to workplace physicians and occupational safety experts. These regulations were drafted in consultation with the stakeholders. Sections 126 and 127 of Act No. 1593 of 24 April 1930 on the Protection of Public Health were amended regarding the workers in food businesses by Ministry of Health Decree No. 663 of 11 October 2011. The preparation of Act No. 6331 of 20 June 2012 on occupational health and safety had been started during the reference period.

The Committee takes note of this information. It asks that the next report provide detailed and up-to-date information on Act No. 6331.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the legislation and regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The report indicates that Ministry of Labour and Social Security Regulation No. 25 369 of 10 February 2004 on precautions to take for occupational safety and health in the workplace building and annexes covers the risks for the establishment, alteration and care of workplaces, and takes Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace into account.

The Committee takes note of this information. It asks whether the above Regulation also refers to the protection of machines, manual handling of loads, work with display screen equipment; hygiene (commerce and offices); maximum weight; air pollution, noise and vibration; personal protective equipment; safety and/or health signs at work.

Protection against hazardous substances and agents

The report indicates that workers are protected against asbestos and ionising radiation at the level required by international standards. Ministry of Labour and Social Security Regulation No. 25 328/2003 on precautions to take for occupational health and safety while working with asbestos takes Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work into account, and incorporates all the Community *acquis* into the domestic law. The report points out that the limit values stated in the Regulation are in conformity with the values established by the EU Directives, and that the

technological progress related to the subject is periodically reviewed in parallel with the developments in science and technology. The report also specifies that asbestos use is prohibited in the workplace. ILO Convention No. 162 on Asbestos (1986) has not been ratified.

Turkish Atomic Energy Authority Regulation No. 18861/1985 on radiation safety, as amended by Regulations Nos. 23 999/2000 and 25 598/2004, set forth the rules on the protection of the population's and the workers' health against the dangers from ionising radiations by taking Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public from the dangers arising from ionizing radiation into account. ILO Convention No. 115 on Radiation Protection (1960) is in force.

The Committee takes note of this information. It asks whether Regulation No. 18861/1985 take account of the Recommendations (1990) by the International Commission on Radiological Protection (ICRP Publication No. 60), relating to exposure limit values in the workplace but also to persons who, although not directly assigned to work in a radioactive environment, may be exposed occasionally to ionising radiation.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in insecure employment.

Temporary workers

The report states that, in accordance with Act No. 4857 of 22 May 2003 on Labour, the legal framework on occupational health and safety is also applicable to temporary workers. Act No. 6331 also refers to the protection of this category of workers.

The Committee takes note of this information. It asks for concrete examples in the next report on how workers employed on fixed-term contracts and temporary and agency workers receive, including when re-hired and upon change of job, occupational health and safety information and training, and for information on whether they have access to occupational health services and representation at work.

Other types of workers

The report indicates that occupational health and safety legislation was drafted by taking into account ILO Conventions No. 155 on Occupational Health and Safety (1981) and No. 161 on Occupational Health Services (1985), as well as Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. Since self-employed workers are not covered by section 3 of this Directive, occupational health and safety legislation does not cover self-employed and domestic workers in Turkey.

The Committee takes note of this information. It recalls that, as stated in Conclusions 2009, all workers in all workplaces, regardless of the sector of activity, must be covered by occupational health and safety regulations. It also underlines that health and safety regulations must apply at all workplaces without exception, including private homes. For the purposes of Article 3§2 of the Charter, all workers, including the self-employed, must be covered by health and safety at work regulations on the ground that employed and self-employed workers are normally exposed to the same risks. It also recalls that the fact that national provisions are inspired or based on a EU Directive does not remove them from the ambit of the Charter.¹

Consultation with employers' and workers' organisations

The report indicates that, at national level, the social partners are represented in the Tripartite Advisory Board provided for under section 114 of Act No. 4857 of 22 May 2003 on labour and Regulation No. 25 423/2004 of 4 April 2004 on the Tripartite Advisory Board, which were in force during the reference period. The Tripartite Advisory Board issues non-binding opinions and recommendations on labour-related issues including occupational health and safety. Moreover, social partners, universities, as well as other institutions and organisations determine the needs, priorities, policy and the strategies on the issue within the National Occupational Health and Safety Council (NOHSC). Regulations under preparation are shared by all parties concerned and other stakeholders, and their views are taken in account. They are also shared with the public via the MoLSS website.

At company level, in accordance with section 80 of Act No. 4857 and section 5 of Regulation No. 25489/2004 of 11 June 2004 on occupational health and safety boards, enterprises of the industrial sector with at least 50 employees must set up occupational health and safety boards which are consulted on work organisation and methods; occupational accidents and diseases; personal protective equipment; and training at the workplace. The report indicates that the occupational health and safety boards were taken up in Act No. 6331 and their remit was extended.

The Committee takes note of this information. It notes that social partners are consulted in the design and implementation of occupational health and safety regulations. It asks for information on workers' representation in undertakings with less than 50 employees.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 3§2 of the Charter.

¹*Confédération Française de l'Encadrement (CFE CGC) v. France, Complaint No. 16/2003, decision on the merits of 12 octobre 2004, §30.*

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Occupational accidents and diseases

The Committee previously noted (Conclusions 2009) that the figures for occupational accidents (6 893) and fatal accidents (1 084) in 2007 were extremely low compared to other States Parties, enquired how statistics on occupational accidents were compiled, and asked that the next report provide also standardised incident rates per 100 000 workers; statistics by sector of activity; and figures on cases of occupational disease.

The report indicates a downward trend in the number of occupational accidents (72 963 in 2008 and 62 903 in 2010) during the reference period. The corresponding standardised incidence rate per 100 000 workers was 829 in 2008 and 627 in 2010, which is excessively low in comparison to the average incidence in other States Parties, as illustrated by the EU-27 (2 269.42 in 2008 and 1 582.71 in 2010). The number of fatal accidents resulting from the above-mentioned accidents increased sharply from 865 in 2008 to 1 444 in 2010.

The report refers to positive outcomes of the implemented National Occupational Health and Safety Policy with regard to the decrease in occupational diseases. No more information on occupational diseases was found in the report.

The Committee takes note of this information. It asks that the next report provide detailed information on obligations to report occupational accidents and on any measures taken to counter potential under-reporting in practice. It also reiterates its requests for information on occupational accidents with respect to different sectors of activity and for figures on cases of occupational disease. It further asks for the standardised rate of fatal accidents. The Committee would recall that the absence of the information required amounts to a breach of the reporting obligation entered into by Turkey under the Charter.

Activities of the Labour Inspectorate

The Committee previously found (Conclusion 2009) the number of labour inspectors, in particular those responsible for occupational health and safety, to be particularly low. It asked for information on the proportion of the new assistant inspectors to be assigned to occupational health and safety matters.

The report indicates that in 2008, there were 23 446 inspection visits dealing with occupational health and safety reaching 875 186 workers, approximately 10% of the labour force. In 2009, there were 19 709 inspection visits, reaching 867 726 workers, approximately 10% of the labour force. In 2010, there were 17 284 inspection visits, reaching 2 211 717 workers, approximately 22% of the total labour force. In 2011, there were 15 902 inspection visits, reaching 1 548 973 workers (the information about the labour force in 2011 is not provided).

The total amount of administrative fines imposed for occupational health and safety breaches was 4 060 821 YTL in 2008; 6 917 000 YTL in 2009; 2 548 596 YTL in 2010; and 7 264 784 YTL in 2011.

The Committee takes note of this information. The report does not provide the requested information, neither on the number of inspectors, nor on the resources allocated to the Labour Inspection Board (LIB) and the Social Insurance Inspection Board. The Committee asks that the next report provide detailed and up-to-date information on these points.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee previously examined (Conclusions 2009) the context of occupational health services. It asked for information on the implementation of Act No. 1593 of 24 April 1930 on the protection of public health and of Act No. 4857 of 22 May 2003 on labour; on how the progressive development of occupational health services is promoted; and on whether a strategy is developed, in consultation with social partners, to establish occupational health services for all enterprises in all sectors of the economy.

The report states, supplemented by another source,¹ that a previous regulation on duties, responsibilities and trainings of occupational physicians has been replaced by Ministry of Labour and Social Security Regulation No. 27 766/2010 on occupational health and safety services; Ministry of Health Regulation No. 27 897/2011 on the safety to be provided to patients and workers; and Ministry of Health Regulation No. 27 768/2010 on duties, authority, responsibilities and trainings of occupational safety experts. According to another source,² occupational physicians are required to register for a course on occupational medicine in the workplace, which is delivered by universities. ILO Convention No. 161 on Occupational Health Services (1985) is in force.

In reply to the Committee's request, the report states that employers may set up Joint Health Safety Units where an occupational physician may provide services in accordance with Ministry of Labour and Social Security Regulation No. 27 766/2010 and Ministry of Health Regulation No. 27 768/2010. Qualification, remit and duties of occupational physicians and of the 174 Joint Health Safety Units and Occupational Health and Safety Units are regulated by law. The 12 Joint Health Care Centres, which supply occupational health services, must be affiliated with the Ministry of Health. Under a project on increasing service quality levels in bodies in charge of occupational health services (Turkish Medical Association, Türk Traktör, Occupational Disease Hospital, etc.), service criteria were defined, and expert visits to these bodies led to exchange on good practices. Another project focused on teaching occupational disease detection and diagnosis by primary care physicians, as well as training and research hospital physicians.

According to the report, Turkey has 6 771 occupational physicians, i.e. 0.256 practitioner per 1 000 workers, given the labour force (2011 – institutional population excluded – no age limit) published by ILOSTAT.³ Also, Act No. 6331 of 20 June 2012 on Occupational Health and Safety will ensure that workers in all workplaces, and from all sectors, will have access to occupational health services.

The Committee takes note of this information. It notes that the report does not provide the requested information on how the progressive development of occupational health services is promoted, and that it does not establish the existence, during the reference period, of a strategy to institute occupational health services for all enterprises in all sectors of the economy. Recalling that the report must provide full, updated information on changes that have taken place in the relevant laws and regulations during the reference period, the Committee asks for detailed information in the next report on how Act No. 6331 and relevant regulations ensure that workers in all workplaces, and from all sectors, have access to occupational health services. In particular, it asks for information on the tasks of occupational health services; the proportion of undertakings equipped with such services or sharing them in practice; the number of workers monitored by such as compared to the previous reference period; and any sanctions and supervision mechanisms to ensure that employers comply with legal obligations in the matter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to institute access to occupational health services for all workers in all sectors of the economy.

¹http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=fr&p_country=TUR

²<http://www.ttb.org.tr/en/index.php/ttb/ttb-hakkinda>

³http://www.ilo.org/ilostat/faces/home/statisticaldata/data_by_country/country-details/indicator-details?subject=EAP&indicator=EAP_TEAP_SEX_AGE_NB&datasetCode=YI&collectionCode=YI&_afLooop=210124635967858#%40%3Findicator%3DEAP_TEAP_SEX_AGE_NB%26subject%3DEAP%26_afLooop%3D210124635967858%26datasetCode%3DYI%26collectionCode%3DYI%26_adf.ctrl-state%3D73l2difbl_284

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Right to the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2009 (average for both sexes) was 74. The average life-expectancy rate in Turkey is still low relative to other European countries, for example the EU-27 average that same year was 79.

The death rate (deaths/1 000 population) was low and stable during most part of the reference period, standing at 5.1.

The Committee notes from the report that the most important causes of death are circulatory diseases (39.9%), cancer (20.7%), respiratory diseases (8.9%), metabolism diseases (6.4%) and external wounds and poisoning (4.0%). The Committee asks what measures are being taken to combat these causes of mortality.

Infant mortality decreased considerably since the last reference period. In 2010 the rate was 7.8 per 1,000 live births, down from 21 per 1 000 live births in 2007. The Committee notes this decline, but also that the rate still remains above that in other European countries (for example, the EU-27 rate in 2010 was 4.1 per 1 000).

As regards the maternal mortality rate, it has also significantly decreased since the last reference period. In 2010 the rate reached 16.92 deaths per 100 000 live births, whilst it was 44 deaths per 100 000 live births in 2005. This rate however also remains above the average in other European countries.

In its previous conclusion the Committee found that the situation was not in conformity with Article 11§1 on the grounds that the rates of infant and maternal mortality were manifestly too high (Conclusions 2009). The Committee notes from the report a number of measures to reduce infant and maternal mortality, including access to family doctors, the increase in the number of "Baby Friendly Hospitals" or the "Guest Mother Project", which have led to very significant improvements in respect of infant and maternal mortality rates. Whilst the latter still remain above the average in other European countries, the Committee finds that efforts in this field have been adequate, leading to a considerable improvement in these indicators, and therefore considers that the situation is no longer in breach of the Charter on this ground.

Right of access to health care

The report mentions that one of the major reforms during the reference period was on the financing of health care services with the establishment of the General Health Insurance System, which covers the whole population under the same benefits package umbrella. It also mentions an improvement in private insurance, with a number of supporting measures, so that it can play a subsidiary role in the health care system. The Committee asks to be kept informed of reforms in the private health sector and their impact.

The Committee notes from another source¹ other important reforms in the health care system: the merging of all public health facilities under the Ministry of Health. This was an important step taken to consolidate the provision of public health care services under one authority. This merger resulted in opening up all public facilities to the whole population and was a step towards equalizing access to health care. Another area of reform was in primary care. A pilot family practitioner scheme was introduced and this scheme was later extended to cover the

whole population at the end of 2010. Under this scheme, residents are required to register on the list of a family physician, who is paid on a capitation basis. The major impact of the reforms can be seen in the improvements in the number of visits to health care providers in recent years. The annual number of visits per person has almost trebled, with easier access both in terms of provision and financing.

The Committee considers that Turkey has embarked on important reforms in the health care system, aiming at developing easily accessible, high-quality, efficient and effective health care services for the population. Although considerable improvements have been made to this end, it finds there are still challenges ahead. In its previous conclusion it requested information on the management of waiting lists and waiting time, as well as on measures to further improve access in rural areas (Conclusions 2009). The Committee reiterates its request for information on these important matters. In the meantime, pending receipt of such information it reserves its position on whether the situation is in conformity with the Charter.

As regards the right to protection of health of transgender persons the Committee received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Turkey there is a requirement that transgender people undergo medical treatment, including sterilisation, as a condition of legal gender recognition". It also claims that "the authorities fail to provide medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". In this respect, the Committee refers to its question on this matter in the General Introduction.

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.

¹*Health systems in transition, Turkey, WHO*

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee recalls that pursuant to this provision, States Party are required to develop policies on health education aimed at the general population as well as for groups affected by specific problems, notably through awareness-raising campaigns.

Although the report contains no information on this, the Committee notes from the written information submitted by the Turkish representative to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, T-SG(2011)1 final) that Public information and awareness raising on health matters is carried out through radio and TV programmes in cooperation with the Ministry of Health and the Ministry of National Education on unhealthy life styles, on diseases with high mortality rates such as cancer, lung and heart diseases. Likewise, with the aim of reducing the harmful effects of tobacco products and their consumption, broadcasting various warning and educational programmes for at least 90 minutes monthly on the TV channels is mandatory. On the subject of tobacco control, the Ministry of Health conducts several public education activities via posters, brochures and leaflets; establishes quitting centers and supports the potential quitters.

The Committee asks the next report to include up-dated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases, with examples of specific information campaigns.

As regards health education in schools, the report mentions that compulsory "Health Information" courses are included in weekly lesson programs of 9th year classes of all the secondary schools. Health, hygiene, and nutrition matters are addressed in all secondary schools pursuant to the goals of the "Regulation of Social Activities of Elementary and Secondary Education Institutions of the National Education Ministry". The Committee notes the content of the health course syllabus in secondary schools. It nevertheless asks whether health education is provided throughout all school life.

On the basis of this information, the Committee considers that the situation is no longer in breach of the Charter on the grounds identified in its previous conclusion, that is, that it had not been established that public information and awareness-raising on health matters as well as health education in schools were adequate (Conclusions 2009).

Counselling and screening

The Committee takes note of the variety of preventive health services for pregnant women and their children, which include health controls, screening and vaccination.

In its previous conclusion, the Committee found that the situation was not in conformity with this provision on the ground that it had not been established that counselling and screening of the population at large as well as children and adolescents, through school medical check-ups, were adequate (Conclusions 2009).

The report contains no relevant information on these matters. The Committee must therefore reiterate its finding of non-conformity on this ground. It asks again what mass screening programmes are available in the country, and also what is the situation concerning school health services.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that counselling and screening of the population at large as well as of children and adolescents, through school medical check-ups, are adequate.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee notes from the report the regulations and laws adopted by Turkey for the reduction of environmental hazards, particularly in the areas of air quality, water management, noise pollution, ionising radiation and asbestos. With regard to air quality, there are 122 fully automated monitoring stations in 81 urban centres to measure the country's main pollutants. In respect of noise, it has been made compulsory to prepare noise maps for areas with a population of over 100 000. The Committee asks for information in the next report on the implementation of the above regulations. For example, by providing information on air pollution levels and trends, or cases of pollution of drinking water or food poisoning during the reference period.

Tobacco, alcohol and drugs

In its previous conclusion, the Committee noted that Turkey had ratified the WHO Framework Convention on Tobacco Control on 31 December 2004, that a ban on smoking of tobacco products in certain public places had been passed. The law also introduced restrictions on the advertising of tobacco products (Conclusions 2009). The current report states that through amendments to Law No. 4207 on Preventing the Damage of Tobacco Products and their Control, new regulations have started to be implemented as of May 2008 on passive smoking. It is now prohibited to smoke in all open and closed public spaces. Reference is also made to the National Tobacco Control Programme of 2007, as well as other preventive measures. According to the Global Survey of Adult Tobacco Consumption by the Turkish Statistical Institute (TÜİK), between 2006 and 2008, the rate of smokers throughout the country decreased from 33.4% to 31.2%, and the rate of smoking was reduced by 2.2%.

The Committee recalls from the previous conclusion that it is illegal to sell alcohol to persons under 18 years of age and that consumption is banned in many public domains (Conclusions 2009). The Committee asks the next report to also include information on consumption trends.

Concerning drugs, the state policy is set out in "The National Policy and Strategy in Combatting Addictive Substances and Addiction" for the period 2006-2012. The Committee asks to be kept informed on the implementation of this policy, namely on its impact concerning trends in drug consumption.

Immunisation and epidemiological monitoring

In its last conclusion, the Committee found that the vaccination schedule in Turkey was in conformity with the Charter (Conclusions 2009). As the current report contains no information on this, the Committee recalls that updated information on national immunisation programmes, as well as on measures to prevent epidemic diseases should be included in every report.

Accidents

The report provides detailed information on measures to prevent traffic accidents, including trainings for pedestrians, communication campaigns, , film and radio spots, and other awareness-raising activities. An Action Plan on Road Safety for 2011-2020 has also been adopted, with a view to reducing traffic accidents. The Committee asks to be kept informed of

the measures implemented in this area. It also asks the next report to include information on measures taken to prevent domestic accidents, accidents at school and accidents during leisure time.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

Risks covered, financing of benefits and personal coverage

In its previous conclusion (Conclusions 2009) the Committee took note of major reforms implemented in the social security system. It further notes from the report the entry into force of the Law No. 5 510 (The Social Security and Universal Health Insurance Act) which took effect on 1 October 2008. This Act covers persons employed on the basis of service contracts (Article 4/a), the self employed (Article 4/b) and public servants (Article 4/c).

The Committee notes from the report of Turkey under the European Code of Social Security that with the Law No. 5 510, a single regulation has been introduced for the execution of social security services to be provided by the Social Security Institution established by way of incorporation of different social insurance schemes which had been in charge of the implementation of the provisions of different acts serving different employee groups.

The Committee further notes from the report the entry into force in 2010 of the Regulations which formulate the procedures and standards concerning social insurance operations and rights and responsibilities. The Social Security Institution is the main body implementing Law No. 5 510.

According to the report, seven social insurance branches have been implemented, including occupational disease, maternity, sickness, old-age and disability. As regards family branch, according to the report, it has not been implemented as a social risk. In connection with family benefit, the Committee refers to its conclusion under Article 16 of the Charter.

As regards unemployment insurance, which is not covered by the Law No. 5 510, the Committee notes from the report that it has been implemented since 2000 and is governed by Law No. 4 447.

As regards the personal coverage of the social security system, the Committee notes from the report that 87% of the population is covered. As regards individual branches, it takes note of the following information:

Healthcare

As regards healthcare, the Committee notes from the report that with the level of access to health services has been considerably improved through the establishment of an obligatory health insurance model, covering the whole society. It further notes from the report that "Green Card" is the system established for those persons who cannot afford buying health services. "Green Card" system is a non-contributory system and is awarded on the basis of a means test. It is executed by the Ministry of Health and is financed by the general taxes.

As regards the personal coverage of the entire healthcare system, according to the report at the end of 2011 the total number of all insured persons, including the general system as well as the green card system stood at around 72 million persons, or around 98% of the population by the Committee's estimation.

Unemployment

The Committee notes from the report that the total number of people compulsorily insured against unemployment risk amounted to 11.2 million persons. The Committee asks what is the share of the total insured out of the total active population (i.e. the total number of employed and unemployed persons).

According to MISSCEO unemployment benefit is paid for 180 days for those with 600 days of unemployment insurance contributions, 240 days for those with 900 days of unemployment insurance contributions and 300 days for those with 1 080 days of unemployment insurance contributions.

The Committee recalls that the adequacy of unemployment benefit is *inter alia* also established by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits. The Committee asks whether the legislation provides for such a reasonable period.

Old-age

The Committee notes from the report under the European Code of Social Security that in 2010 the total number of insured persons, including employees on a service contract, self-employed as well as public servants stood at around 16 million persons. The Committee asks what is the share of total insured out of the total active population.

Sickness

According to MISSCEO, the employer continues to pay the full salary for 7 days. After that the fringe payment is deducted from the salary whereas the basic salary is paid as long as the sickness continues. In case the total number of sickness leave days used within one calendar year exceeds 7 days, the benefit is reduced at the rate of 25%. However, no deduction is made during in-patient treatment in the official inpatient treatment institutions due to sickness leave given upon medical board report.

According to the report, personal coverage amounted to around 13 million in 2009. The Committee notes from the report under the European Code of Social Security that the total number of the insured against sickness risk stood at 13.5 million in 2010. The Committee asks what is the share of the total insured out of the total active population.

Adequacy of the benefits

In its previous conclusion the Committee asked for information regarding the minimum levels of income replacement benefits as well as the level of poverty line.

The Committee notes from the report that the poverty line, defined as 50% of the gross domestic product per capita stood at TL 729 (€364) in 2011. The Committee notes from another source¹ that the poverty threshold, calculated as 50% of the median value of the consumption expenditure per equivalent household, defined as relative poverty line, stood at TL 4 069 in 2011 (TL 339 or €169 per month). The Committee will take this indicator into account when assessing the adequacy of income-replacement benefits.

As regards *unemployment benefit*, according to the report it amounted to around 40% of the daily average gross wage. As the minimum monthly wage was determined at 796,50 TL (€398) for the period between 1 January 2011 and 30 June 2011, the minimum level of unemployment benefit calculated on the basis of the minimum wage amounted to TL 332 (€159) in 2011.

As regards *old-age benefit*, according to MISSCEO the minimum pension stood at 35% of the average monthly salary. The Committee notes from the supplementary information provided by the Government that in 2011 the minimum pension stood at TL 782.40 (€372). The Committee notes that the level of the minimum pension is substantially higher than the above mentioned poverty threshold. However, it also notes that there is a discrepancy between the information provided in MISSCEO and that provided in the report. Therefore, the Committee asks for clarification and updated figures on the minimum pension for the reference period.

As regards *sickness benefit*, the Committee notes from the report under the European Code of Social Security that the daily limits of the benefit are set out in Article 82 of the Law No. 5 510. Lower limit of the daily earning is one thirtieth of the minimum wage and the upper limit is 6.5 times the lower limit of daily earning. The Committee ask the next report to confirm that the minimum level of sickness benefit will never fall below the level of minimum wage.

The Committee notes that the minimum levels of income-replacement benefits range between 40% and 50% of the median value of the consumption expenditure per equivalent household. The Committee asks the next report to provide updated information regarding the minimum levels of these benefits, calculated on the basis of the minimum wage as well as the information on any supplements (e.g. housing assistance) paid to persons who receive the minimum levels of these benefits.

The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

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.

¹http://www.turkstat.gov.tr/VeriBilgi.do?alt_id=1013

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

Turkey has ratified the European Code of Social Security and its Protocol on 7 March 1980 and has accepted parts I, II, III, V, VI, VIII, IX, X, XI, XII, XIII and XIV of the Code.

The Committee notes from Resolution CM/ResCSS(2012) 18 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Turkey (period from 1 July 2010 to 30 June 2011) that the law and practice in Turkey continue to give full effect to the parts of the Code which have been accepted, as amended by the Protocol, subject to receiving the information requested regarding maternity benefit.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee takes notes of the measures implemented in the follow up to the reform of the social security system.

As regards developments in the area of *health insurance*, the Committee takes note of measures taken with a view to widening the scope of coverage and making the system more accessible. Under the Law No. 5 510 all insured persons can benefit from health services on an equal footing. Moreover, preventive healthcare is also covered. As regards children, they can benefit from healthcare notwithstanding whether universal health insurance premium has been paid or not. Healthcare provided under the universal coverage includes all types of care except for aesthetic.

Persons whose universal health insurance has been ended are registered by the social security institution and are thus obligatorily taken again under the coverage of universal health insurance system. As regards the premium, its payment and its amount is decided on the basis of a means test. The premium of the persons whose monthly income per capita in a family is less than one third of the gross minimum wage is paid by the state. Individuals who benefit from Unemployment Insurance Law are also covered by the system.

As regards *old age insurance*, according to the report, without changing the fundamental structure of the pension system, some rules, such as monthly pension assignment and number of premium days for retirement have been amended in order to make the pension system sustainable.

The Committee further takes note of measures taken with a view to combating informal employment. These measures have included, among others, raising of administrative fines for unregistered work, providing incentives to register in agricultural work, obligation of salary payment through the bank etc.

The Committee observes that these measures have been directed towards increasing the personal coverage of social security risks. The Committee refers to its conclusion under Article 12§1 and asks for statistics showing how these measures have affected the personal coverage of social security system in its unemployment, sickness and maternity branches.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

In its last conclusion, the Committee concluded that equal treatment was guaranteed to all foreigners in respect of all branches of insurance (work accident, occupational disease, sickness, maternity, invalidity, old age and death), including unemployment insurance since 1 October 2008. The current report states that equal treatment continues to be guaranteed to foreign citizens. As far as health insurance is concerned, the report adds that the Social and Health Insurance Law No. 5 510 provides that in order to be covered by universal health insurance a foreign citizen has to reside in Turkey for minimum one year.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.

The Committee recalls that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. The Committee asks that the next report indicate whether the Government plans to conclude agreements with States Parties with which there are no such agreements or unilateral measures and, if so, when.

Right to retain accrued benefits

The Committee found in its previous conclusions the situation to be in conformity as far as the retention of accrued benefits was concerned. The Committee, however, asks each future report to provide information on the current state of the law.

Right to maintenance of accruing rights (Article 12§4b)

In its last conclusion, the Committee pointed out that Turkey had ratified the European Convention on Social Security to demonstrate that it had undertaken to apply the accumulation of insurance or employment periods to non-nationals. The Committee, thus, considers the situation to be in conformity in this respect.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 12§4 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

Since 2000 (Conclusions XV-1), the Committee has repeatedly held that the situation in Turkey was not in conformity with the Charter as all persons without resources were not guaranteed an individual, enforceable right to social and medical assistance. In its previous conclusion, it noted however that a reform was under way and asked to be kept informed about the setting up of a new system of social assistance.

In this respect, the report indicates that, under the Social Security Institution Law No. 5502/2006, the non-contributory payments previously managed by different institutions and organisations were centralised under a single body, the General Directorate of Non-contributory payment, within the Social Security institution, until end November 2011, when the system was reorganised and the responsibility in this field was transferred to the Ministry of Family and Social Policies pursuant to the Decree Law No. 633 of 3 June 2011.

In addition, the treatment of social assistance requests was streamlined and made more efficient through the setting up of two centralised database systems, the "social assistance information system" (SAIS) in 2009, which rapidly retrieves the applicants' data from 14 different institutional databases, thus allowing to treat in a few seconds requests that previously took several procedural steps and needed 15-20 days, and the "information system of integrated social assistance services" (ISAS), which became operational in October 2011 and which centralises in a common database all data on poverty and social assistance (6.4 million households), allowing for a more efficient treatment of social assistance requests and payments, including inter-institutional data-sharing to avoid abuses related to multiple requests. According to the report, as of February 2012 (outside the reference period), 9 million assistance applications were received through this system, 3.5 million of which led to the granting of assistance. As of January 2012, income test operations of Universal Health Insurance (see below) started also to be carried out through the system.

Furthermore, an Action Plan was drafted in 2010, aimed at associating social assistance with employment policies. Another project, run by the General Directorate of Social Assistance, aims at identifying right-holders by a grading formula based on objective criteria, so as to ensure a fairer distribution of benefits based on need; this system was expected to be tested as from 2012.

The Committee takes note of these developments, which mostly started to be effective at the end of the reference period or beyond it, but finds that the information provided is insufficient to assess whether the new social assistance system complies with the Social Charter. It accordingly asks the next report to provide the following information:

- What are, under the new system, the eligibility criteria to be entitled to non-contributory social assistance?
- Is social assistance available to any person in need or only to specific categories of people?
- Under what conditions is social assistance available to foreign nationals?
- What are the conditions – if any – under which the benefits might be suspended (for example, is there a requirement not to refuse a suitable job or training offer)?

- Are the benefits awarded for as long as the situation of need persists?
- How is the situation of the claimant assessed, i.e. what is included or not in assessing income and property assets?
- What account is taken of the family size and situation?
- What forms of assistance are provided?
- What are, if any, the standard amounts of the main benefits and additional benefits granted?
- What type of additional benefits are provided, if any?
- Are the benefits granted adequate when compared to the poverty threshold (set at 50% of the median equivalised income, Eurostat)?
- Are there any statistical data about the number of requests for social assistance, the number of those accepted (and number of beneficiary individuals and households) and amounts granted?

Pending receipt of this information, the Committee does not find it established that during the reference period there was a legally enforceable individual right to social assistance available to all persons in need.

As regards medical assistance, the Law on Social Insurance and Universal Health Insurance No. 5 510 of 31 May 2006 entered into force on 1 October 2008 and established universal health insurance coverage. According to the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1final, §323), the system was to become fully effective as from 2010. However, the report indicates that in fact the previous system, based on the "green cards" entitling people to medical treatment (see previous conclusions) was only replaced by the new system in 2012 (outside the reference period), following the issuing of the regulation on Universal Health Insurance of 1 January 2012. Under the new system, citizens whose income is less than one third of the minimum wage amount per person in the family are entitled to the same health services as other people, the costs being covered by the general health insurance. According to the report, 9 337 850 people were covered by the green card in 2008, against 8 865 470 in 2011.

The Committee notes that the universal health coverage took effect outside the reference period, while the "green card" system was still in force till end 2011 for people whose income constituted one third of the minimum wage or less. In this respect, the Committee had asked what were the eligibility criteria for access to medical treatment for people in need, not entitled to a green card and, in the absence of a reply, it did not find it established that all persons without resources had effective access to the medical care required. It notes from the report on Article 12 that all Turkish citizens who were not covered by contributory health insurance and could not afford to pay for health services were entitled to the "green card", financed by the state budget and covering the costs of in-patient and out-patient treatments, including medical exams and consultations, dental care and prosthesis, optical services and medicines. According to the report, the green card system did not cover the medical expenses of certain categories of inactive people, such as higher education students and conscripts. The Committee understands that specific health coverage arrangements apply to such categories and asks the next report to confirm that this is the case, to clarify whether, under the new system, there are people not entitled to health coverage (either under the contributory or the non-contributory system) and to

provide any available relevant data in this respect. It reserves in the meantime its position on this issue.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to MISSCEO, Turkey did not have during the reference period a general social assistance scheme providing for a minimum amount of social assistance that would be paid to a single person without resources. In the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc.T-SG(2011)1 final, §323), the authorities indicated that the new system to be introduced would provide for a subsistence payment, whose amount would be calculated on the basis of the poverty threshold, as determined by the Turkish statistics institute every year. However, the report does not indicate that such a system was yet in force in the reference period and it does not provide any data concerning the benefits paid to a single person without resources (other than old age pensioners or disabled people).
- Additional benefits: according to the information provided to the Governmental Committee (see above), the new social assistance system would provide for a rental assistance, amounting up to 50% of the statutory minimum wage for families in need, renting their accommodation. The report however does not confirm the entry into force of this or other benefits during the reference period.
- Medical assistance: see above.
- Relative Poverty threshold (defined as 50% of the median value of the consumption expenditure per equivalent individual): it stood at TRL 366 per month in 2011 (€177 at 1 January 2011, €148 at 31 December 2011).

In the light of the information above, the Committee reserves its position as to whether the level of social assistance is adequate.

Right of appeal and legal aid

The Committee has previously noted that claims concerning social assistance rights can be filed with the body responsible for providing such assistance and asked for information on the appeal procedures and their application in practice, in particular the number of appeals lodged and the possibility of obtaining legal aid. The report replies that, under Laws No. 2 022 (Law on Pension for Turkish citizens over 65, needy and homeless) and No. 3 294 (Law on Social Assistance and Solidarity Fund), applications can be made to administrative courts against decisions concerning social assistance. These decisions can be appealed before the regional administrative courts, whose decisions are final. In the light of the reforms in the field of social assistance, mentioned above, the Committee asks the next report to specify whether an appeal is possible against all decision concerning social and medical assistance, and reiterates its previous request for relevant data on the appeals lodged and for information about the availability of legal aid.

Personal scope

Under Law No. 5510/2006 on Social Insurance and Universal Health Insurance, stateless people, asylum-seekers and refugees, are covered by the universal health insurance. In addition, further specific measures have been taken in respect of asylum seekers and refugees (Circulars No. 2010/19 of 19 March 2010, No. 2010/03 of 24 March 2010, No. 8237 of 20 May 2009). The Committee takes note of the statistical data provided concerning the number of beneficiaries and the types and costs of benefits granted in this connection (disaster assistance, accommodation, education, food, clothing, cash, fuel, health costs etc.).

According to Article 60 of the Law No. 5510/2006, foreign residents, not covered by health insurance by their own country, are also covered by the universal health insurance under condition of reciprocity. Furthermore, Law No. 3294 on Social assistance and solidarity fund provides assistance also to foreigners in need residing in Turkey. Applications from foreign residents in need, not benefiting from any social rights, are assessed by the International Social Services Organisation, which examines the situation and establishes a report.

The Committee points out that foreigners who are nationals of Contracting Parties, lawfully residing in the territory of another Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals without the need for reciprocity. Accordingly, the Committee asks the next report to confirm that nationals of Contracting Parties to the Charter, lawfully residing in Turkey, enjoy social and medical assistance rights on an equal footing with Turkish nationals, without any condition of reciprocity. It furthermore asks the next report to provide more detailed information, as well as any relevant statistical data, on the applications for social and medical assistance filed by foreign residents from Contracting Parties and the number of requests leading to the granting of social and medical assistance. In the meantime, it holds that foreign nationals, lawfully resident in Turkey are not entitled to social and medical assistance on an equal footing with Turkish nationals.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 13§1 of the Charter on the grounds that, during the reference period,

- there was no legally established general assistance scheme that would ensure that everyone in need had an enforceable right to social assistance;
- foreign nationals of other States Parties, lawfully residing in Turkey, were entitled to social and medical assistance on an equal footing with Turkish nationals only under condition of reciprocity.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

It notes from the report that there have been no changes to the situation which it has previously considered to be in conformity to the Charter: the beneficiaries of social and medical assistance are not exposed to any restriction in their political and social rights because of that.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

According to the report, there are no services specifically addressed at people without resources or at risk of becoming so, but this kind of services are provided within the framework of the general social services. As the Committee had previously noted (Conclusions 2009), the report confirms that the General Directorate of Social Assistance and Solidarity has indeed the task of establishing social assistance strategies aimed at fighting poverty; alleviating poverty and its consequences through social assistance programmes; establishing a central social assistance database and the relevant objective standards; carrying out social assistance activities and performing the income test for the universal health insurance, implementing the Law No. 3 294 on Social Assistance and Solidarity Fund.

The Social Assistance and Solidarity Encouragement Fund finances 937 Social Assistance and Solidarity Funds established in all the provinces and counties across the country with the mandate of granting cash and in-kind assistance to people in need and performing research studies in accordance with the above mentioned Law No. 3 294. The Committee asks the next report to provide updated and comprehensive information on the assistance provided by Social Assistance and Solidarity Funds, i.e. to confirm that they provide, free of charge, advice and personal assistance in the meaning of Article 13§3 to people without resources or at risk of becoming so.

According to the report, the total expenditure on social assistance and services was 1.38% of the GDP in 2010. In this respect, the Committee reiterates its question as to whether the resources allocated to social services are sufficient to give appropriate assistance as necessary.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Turkey is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee noted in 2000 (Conclusions XV-1) that foreign nationals from other Contracting Parties to the Charter, who live lawfully within the state without being resident, could seek emergency aid, including medical aid, from local trusts of Social Solidarity and Assistance, and that basic medical assistance was also available to non-nationals under Law No. 224 on the Socialisation of Health Services of 1961. In the light of the recent reforms of the social and medical assistance system, the Committee asks the next report to provide updated information on the social and medical assistance available to non-resident foreign nationals from States Parties to the Charter (legal basis of the assistance and conditions for entitlement, nature and extent of the social and medical assistance provided). It reserves in the meanwhile its position on this issue.

In its previous conclusion (Conclusions 2009), the Committee asked what was the nature and extent of the assistance provided to irregular migrants and whether a specific legal basis existed for the provision of this form of assistance in cases of urgent need. In response to this question, the report indicates that the needs of irregular migrants who are arrested and detained in repatriation centres are covered, pending their deportation, by the General Directorate of the Security of the Ministry of Home Affairs. Migrants living in repatriation centres are entitled to food (Circular No. 2010/18 of 19 March 2010) and accommodation, clothing as well as obligatory medical treatment and medicine expenses.

The report furthermore indicates that specific assistance is available to women in vulnerable situations, including refugees, asylum seekers as well as irregular migrants, in accordance with the circular on "operations for the refugees and asylum seeker" No. 2010/03. Similarly, specific provisions provide for exemption from medical expenses for the victims of human trafficking (annex to the Council of Ministers' decision No. 2003/6565 of 5 December 2003). The Committee asks the next report to clarify the conditions to benefit from this kind of assistance as well as what assistance, if any, is available to migrants in an irregular situation who would not be considered to be "victims" and are not in a repatriation centre.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Turkey is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Decree Law on the Organization and Functions of the Ministry of Family and Social Policy set up a general social services system. The new Ministry is one of the most important public institutions in the field of social policy dealing with key social issues affecting notably disabled persons, the elderly, persons in need, women, children, families or veterans. Given the recent establishment of the Ministry, the single application of social benefits and services is still in progress. The Committee notes that new legislation is to be adopted soon and asks for the next report to provide detailed information on this legislation and its implementation.

Effective and equal access

The Committee previously asked detailed information on how decisions on the provision of social services were taken. The present report answers partially to this question by focusing on the particular case of the elderly and disabled persons. Given that the setting up of a general social services system is ongoing, the Committee asks the next report to explain how, generally speaking, decisions concerning the provision of social services are taken.

Concerning the issue of access to social services for nationals of other States Parties, the report once again provides a partial answer by only mentioning the case of the elderly, asylum seeker/refugee and unaccompanied children. The Committee asks the next report to provide information, on whether and how, nationals of other States Parties have access to social services.

The report notes that the following services are free of charge for persons who are in need:

- Homes for the Elderly and the Elderly Care and Rehabilitation Centres;
- Centres for Disabled Persons;
- Private Nurseries and Day Care Centres.

The Committee reiterates its question on the geographical distribution of the services. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1 of the Charter.

In view of the as yet uncompleted legislative reforms and the outstanding information requested, the Committee considers that it has not been established that there exists an effective and equal access to social services.

Quality of services

In its last conclusion, the Committee asked information on the qualification and number of staff in social services, but the report fails to answer to these requests. The Committee wishes also the next report to indicate the ratio of staff to users.

The report is also silent on supervision mechanisms in charge of ensuring the adequacy of services, public as well as private.

The Committee asks that all the information requested be included in the next report. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1 of the Charter.

The Committee asks also whether there is any legislation on personal data protection.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that there exists an effective and equal access to social services.

Article 14 - Right to benefit from social services

Paragraph 2 - Public participation in the establishment and maintenance of social services

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

The legislation on the public participation in the establishment and maintenance of social services has been reformed. It is now Decree Law No. 633 that deals with the participation of individuals and voluntary organizations to the provision of social welfare services. In this regard, the role of the Ministry of Family and Social Policy is twofold. Firstly, it identifies principles, methods, and standards in view of the provision of social services for governmental bodies and institutions, voluntary organizations, natural and legal persons. Secondly, it carries out inspections and ensures that all the above mentioned social services' providers comply with the rules it has pre-established. Decree Law No. 633 constitutes a total shift from previous legislation in the sense that the new regime is more citizen-oriented. The report notes that its implementation is still in progress.

In its last conclusions, the Committee asked to be informed of the procedures that are to be followed by non-public service providers and the requirements they must satisfy to be allowed to offer services. The present report explains in detail these procedures in relation only to disabled persons and children. The Committee considers that in view of the lack of information and taken into account that the implementation of the Decree Law is still in progress, it has not been established that the conditions under which non-public providers take part in the provision of welfare services are in conformity with Article 14§2 of the Charter.

The Committee also wishes to know whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

In its last conclusions, the Committee asked information on the financial measures taken to promote the activities of voluntary organisations. Given the absence of an answer, the Committee asks the next report to indicate the requested data. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2 of the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 14§2 of the Charter on the ground that it has not been established that the conditions under which non-public providers take part in the provision of welfare services are adequate.

Article 23 - Right of the elderly to social protection

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

Legislative framework

In 2007, the Government adopted a National Action Plan on the Situation of Elderly Persons in Turkey and Ageing, the Committee asks to be informed of the outcome of the Plan.

The Committee previously asked whether anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment existed, or whether the authorities plan to legislate in this area. The report provides no information on any such legislation. Therefore, the Committee concludes that the situation is not in conformity with the Charter in this respect.

The Committee also asks for information on the legal framework related to assisted decision making for the elderly, and, in particular, whether there are safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons. In this respect, the Committee refers to its Statement of Interpretation in the General Introduction.

Adequate resources

When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining the income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes from another source¹ that the poverty threshold, calculated as 50% of the median value of the consumption expenditure per equivalent household, defined as relative poverty line, stood at TL 4 069 in 2011 (TL 339 or €169 per month). The Committee will take this indicator into account when assessing the adequacy of income-replacement benefits.

As regards old-age benefit, according to MISSCEO the minimum pension stood at 35% of the average monthly salary. Calculated on the basis of the minimum wage, it amounted to TL 278 (€139) per month in 2010.

However, according to the supplementary information submitted by the authorities the minimum pension amounted to TL 782.40 (€284) per month in 2011. The Committee notes that this is substantially higher than the above-mentioned poverty thresholds and asks for clarification of the amount of the minimum pension as there is a discrepancy between the information available from MISSCEO and that provided by the authorities. It also asks for information on the conditions for entitlement to the minimum pension as well as the share of elderly persons in receipt of such a pension.

According to this information those who do not receive a pension (those who have never worked) must rely on social assistance. The report under Article 13 provides some information on social assistance for elderly persons. However the Committee needs further information in order to assess the situation, it asks the next report to provide full information on all assistance

available to elderly persons not in receipt of a pension, including information on the conditions for receipt of such assistance.

Prevention of elder abuse

The Committee previously requested information on all measures that have been taken to prevent elder abuse. The report refers to the relevant sections in the Penal Code. It further refers to the "Draft program of National Ageing Practices" under which the Government will adopt new regulations for the prevention of elder abuse, on training on the prevention of elder abuse and on reporting mechanisms. The Committee asks the next report to provide information on these new measures as well as information on what the Government is doing to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect.

Services and facilities

The Committee notes that measures have been taken during the reference period to increase community based care i.e. services offered to elderly persons in their own homes or in the community. The report makes reference to home help (home life assistance), cultural activities and care services for persons with dementia.

The Committee asks whether in general the supply of home help services for the elderly matches the demand for them, how their quality is monitored, and if there is the possibility for elderly persons to complain about services. Furthermore, it wishes to know whether the extent of their provision differs from one municipality to another, and whether there is a charge for any of these services.

The Committee also asks for further information on any services or facilities (such as respite care) for families caring for elderly persons, in particular highly dependent persons, as well as on any particular services for those suffering from dementia.

Housing

The Committee finds virtually no information on housing or housing policies for elderly persons in the report. Therefore it asks again whether the needs of elderly persons are taken into account in national or local housing policies, whether adequate sheltered/supported housing is provided, and whether the supply of such housing is sufficient and whether assistance for home adaptation is available. In this respect it recalls that appropriate housing conditions are very important for an old person's well-being. However, it is also aware that the improvement of housing conditions of senior citizens is not an easy task. First, it requires considerable public funding, as the average elderly person usually cannot afford the costs of modernisation of his apartment or purchasing a new apartment of higher standard. Second, improvement of housing conditions by moving elsewhere is often not a viable option in that it uproots the elderly person from his "natural" environment. Bearing in mind these constraints, the Committee wishes to be kept informed of any public policies providing financial assistance for the adaptation of housing.

Health care

The report refers to the development of an Action Plan relating to the health of elderly persons. The Committee asks the next report to provide further information on this.

Current policies encourage elderly persons to avail of community health care services, and there are guidelines for doctors working in primary health care services on diagnosis and

treatment of elderly persons. Persons suffering from dementia are treated in hospitals no special facilities exist.

The Committee recalls the importance of establishing health care programmes and services (in particular primary health care services) specifically aimed at the elderly, as well as guidelines on health care for elderly persons. In particular, there should be mental health programmes for any psychological problems in respect of the elderly, adequate palliative care services and special training for individuals caring for elderly persons. . The Committee therefore asks for more information on these matters in the next report. Information should also be provided on any measures taken on improving accessibility and quality of geriatric and long term care, or on the coordination of social and healthcare services in respect of the elderly.

Institutional care

According to the report the number of beds in private and public nursing homes amounts to 23 529 split between 289 institutions and that there were 862 persons waiting for a bed in such an institution.

According to the report despite programs to improve the range and number of services to elderly persons in their homes and emphasis on care in the community the number of nursing homes and other similar institutions has grown over the reference period, this has been accompanied by a strategy to improve the quality of care in nursing homes. Regulations have been adopted concerning the qualifications of those caring for elderly persons, food requirements in institutions, hygiene, facilities etc.

Institutional care- nursing homes may be provided by public or private sector providers.

Institutions provided by the state, under the responsibility of the Ministry of the Family and Social Policies are free of charge for those who have no means otherwise there is a fee. The Committee asks for further information on the fees payable. Public institutions are inspected once a year. The report also refers to periodic inspections by a province inspection board. The Committee asks for further information on the independence of the inspection bodies.

As regards private nursing homes, the Committee previously noted that Regulations governing the standard of care, personnel etc had been adopted. According to the report private institutions must be inspected twice a year by the body responsible for authorising the establishment of the institution.

The Committee asks for information on how fees are set for private institutions, how these facilities are licensed, and a whether procedures exist for complaining about the standard of care and services or about ill treatment in this type of institution.

Lastly, the Committee asks for information on whether and how the rights of elderly persons living in institutions are safeguarded – in particular, the right to appropriate care and services, the right to: privacy, personal dignity, maintain personal contacts, participate in decisions concerning living conditions in their institution and complain about the treatment.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 23 of the Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

¹http://www.turkstat.gov.tr/VeriBilgi.do?alt_id=1013

Article 30 - Right to be protected against poverty and social exclusion

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

The Committee refers to its statement of interpretation on Article 30 in the General Introduction to these Conclusions and invites the Government to take it into account when drawing up the next report.

Measuring poverty and social exclusion

According to the report, one of the indicators used by the authorities to measure poverty is the relative poverty rate. The previous report stated that in 2004, 14.18% of the population were living below the at-risk-of-poverty threshold. In the period between 2004 and 2009 the rate underwent various changes, it has increased and decreased and the final indicator for 2009 is 15.12% which is higher than that reported for 2004.

Another indicator is the so-called hunger line. In 2004, 1.29% of the population was living below the hunger line, while in 2009 it was only 0.48% . The report specifies that this line refers to the cost of a package including staple food products required for a person to maintain his/her life.

However, according to Eurostat, the at-risk-of poverty rate was 26% in 2003 and 26.5% in 2006 (no further information on following years is available), which is significantly above other European countries (the EU average in 2011 was 16.5% for EU-27).

The report provides information on certain vulnerable groups such as people with disabilities and in the report under Articles 13 and 14 references are made to the progress on issues concerning children and women. There is no information on the situation of ethnic minorities and single mothers.

The Committee recalls that Article 30 does not only cover poverty, but also social exclusion and the risk of social exclusion. It asks that the next report contain information on indicators used to measure the nature and extent of social exclusion.

Approach to combating poverty and social exclusion

In the previous conclusion (Conclusion, 2009) the Committee recalled that governments must adopt an overall and coordinated approach to combating poverty and social exclusion, which must comprise an analytical framework, and take measures promoting access to social rights, in particular employment, housing, training, education, culture and social and medical assistance for persons in, or at risk of finding themselves in, a situation of poverty or social exclusion. It also asked how social exclusion and risk of social exclusion was tackled. In reply, the report states that social exclusion, which is a non-financial aspect of poverty in Turkey, is understood as being excluded from basic services such as health and education and cultural opportunities required for maintaining basic human activities, production activities and decision making processes.

The Committee takes note of the institutional and organizational changes such as the introduction of amendments to legislation. In 2010, the provision on "Precautions to be taken for the people in need of vital protection such as children, elderly and the persons with disabilities, shall not be presumed to be incompatible with the equality principle" was added to Article 10 of the Turkish Constitution, dated 7 November 1982. The Law No. 6 111, dated 13 February 2011 concerns the issues related to employment of people with disabilities.

The report provides information on the steps taken towards the implementation of the Medium-Term Programme (MTP) (2006-2008), "Social Inclusion and Combating Poverty". Policies aiming to improve the living standards of disadvantaged groups, who have been excluded from social life (such as people without social security, uneducated people, children in need of protection, elderly and persons with disabilities) have been adopted.

Measures to combat poverty and social exclusion have been continued within the "Improving the Income Distribution, Combating Social Exclusion and Poverty" Mid-term Programme 2012-2014.

The Committee previously asked for more information about the impact of any measures taken in terms of reducing poverty and, in particular, social exclusion and for more details on what has been done to integrate the various benefits and services across the policy areas referred to in Article 30, such as employment, housing, training, education and culture, and asked for quantified indicators of the means deployed, the number of beneficiaries and the results achieved for each of the measures concerned.

In reply, the report refers to the newly created Ministry of Family and Social Policy which is now responsible for the provision of education, consulting and social assistance to families in order to support children and their upbringing in the household and to eliminate discrimination against women, preserve and develop women's human rights, ensure women to benefit from all rights, opportunities and privileges in all domains of social life as equal members among other functions. The Committee repeats its request for the information on the measures developed, the number of beneficiaries and the results achieved.

In the sphere of social and medical assistance, compulsory health insurance for Turkish citizens who do not have any social security, started on 1 January 2012. After this date, some 9 320 000 persons, were given a green card according to Law No. 3 186 and benefited from free medical care (expenses were financed by the Ministry of Health). The Committee refers in this respect to its conclusion under Article 13§1.

The Committee asks that the next report contain more detailed information on measures taken to combat poverty and social exclusion, including on their results, on the resources allocated and on how they are integrated within the framework of a coordinated and overall approach. Meanwhile, it reserves its position as to whether the measures are adequate in light of the level of poverty in Turkey.

Monitoring and assessment

The Committee notes that an "e-state application" has been introduced by the General Directorate of Social Assistance of the Ministry of Family and Social Policy in order to share institutional (online) data which is oriented towards detecting poverty. The aim of the Project is to collect data in respect of social assistance applications. The Committee wishes to receive an explanation of this project and asks how it contributes to monitoring and assessing poverty and social exclusion.

In its last conclusion, the Committee asked for information, backed up by practical examples, on how individuals and voluntary associations take part in assessing measures to combat poverty. The report does not provide any information on this issue.

The Committee recalls that Governments must show how they monitor and evaluate poverty reduction measures as well as provide information on the results of such monitoring and evaluation (including on any changes/adaptations undertaken in consequence). It therefore asks

for comprehensive information in the next report on all the elements of the system for assessing and monitoring measures to combat poverty and social exclusion.

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.