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European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(TURKEY)

Articles 2, 4, 21, 22, 26, 28 and 29

of the Revised Charter

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Turkey, which ratified the Charter on 27 June 2007. The deadline for submitting the 6th report was 31 October 2013 and Turkey submitted it on 19 February 2014.

The report concerns the following provisions of the thematic group "Labour rights":

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

Turkey has accepted all provisions from this group except Article 2§3, 4§1, 5, 6§1, 6§2, 6§3 and 6§4.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on Turkey concern 16 situations and are as follows:

- 6 conclusions of conformity: Articles 2§2, 2§4, 2§5, 2§7, 21, 29.
- 8 conclusions of non-conformity: Articles 2§1, 2§6, 4§2, 4§4, 4§5, 22, 26§1, 26§2.

In respect of the other 2 situations related to Articles 4§3 and 28, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

The upcoming report will deal with the following provisions of the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2014.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee observes that there have been no legislative developments during the reference period.

In its previous conclusion (Conclusions 2012) the Committee asked whether the regulations in place (Article 63 of the Labour Act No 4857) would allow a worker to work 66 hours (11 hours per day during a 6 day working week) in some of the weeks of the reference period on condition that the average weekly working time does not exceed 45 hours under flexible working time arrangements.

The Committee notes in this respect that the Turkish legislation still allows a worker to work 66 hours in some of the weeks of the reference period, provided that this is compensated by working less in other weeks so that the average of the reference period does not exceed 45 hours.

The Committee recalls in this respect that flexibility measures regarding working time are not a such in breach of the Charter. It recalls (Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

1. they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours (up to 16 hours a day and more than 60 hours a week) must not be exceeded in any case.
2. they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
3. they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

The Committee observes that the flexible working time arrangements in Turkey fail to satisfy the first condition, that is, they allow an individual working week to be longer than 60 hours. Therefore, the situation is not in conformity with the Charter.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

The Committee takes note of the statistics relating to the breaches as identified by the Labour Inspectorate Board and the administrative penalties imposed.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 2§1 of the Charter on the ground that the legislation allows weekly working time to be up to 66 hours.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

According to the report, a total of some 14 days, between civil and religious holidays, are provided by the Law on National and General Holidays No. 2429. Section 47 of the Labour Code provides for public holidays with full pay. Under Section 44 of the Labour Code (Act No. 4857), collective agreements or the employment contract may provide for work to be done on public holiday. Otherwise, the consent of the employee is required for work on public holiday. The Committee asks that the next report clarify whether an exhaustive list of criteria exist to identify the circumstances under which work is allowed during public holidays. It notes from the report that the respect of the relevant legislation on public holidays is monitored by the Labour Inspection Board, which found during the reference period 150 breaches and imposed a total of TRL 1,966,674 of administrative fines.

The Committee previously noted that work performed on a public holiday is paid at twice the standard rate. In response to the Committee's question, the report clarifies that, under Section 47 of the Labour Code, "Employeees in establishments covered by the Act shall be paid a full day's wages for the national and public holidays on which they have not worked; if they work instead of observing the holiday, they shall be paid an additional full day's wages for each day worked. In establishments where a percentage wage system is in effect, the wage for the national and public holidays shall be paid to the employee by the employer".

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee considers that the situation in Turkey is in conformity with Article 2§2 of the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above, or because they have not yet been applied.

Elimination or reduction of risks

The Committee refers to its conclusion of conformity under Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It notes, in reply to its request of the list of activities regarded as dangerous or unhealthy, that a Circular on Hazard Classes of Workplace entered into force end 2012, which lists the hazardous occupations. It also notes that the new law on Occupational Health and Safety (No. 6331) which entered into force on 30 December 2012, imposes an obligation to assess the existing and potential risks and to identify the prevention measures. According to the report, this law complies with the Occupational Safety and Health Framework Directive 89/391/EEC and ILO Conventions No. 155 and 161. The Committee takes note of the information provided on the Project for Enhancing Occupational Health and Safety, the awareness-raising measures taken as well as the introduction of project activities in the field of occupational health and safety.

Measures in response to residual risks

The Committee notes from the report that the new Law on Occupational Health and Safety, No. 6331 of 2012 applies not only to workers covered by a labour agreement but also to any work and workplaces, both in the public and the private sector, employers and their representatives, all workers including apprentices and trainees with the exception of Turkish Armed Forces, activities of general law enforcement officers and National Intelligence Organization, intervention activities of disaster and emergency units, domestic work, self-employed persons, activities of work dorms, training, security and vocational courses. The law focuses on risks assessment and management and provides that if risk assessment is not performed in workplaces such as mines, metal and construction works, sectors working with hazardous chemicals and workplaces with the risk of big industrial accidents, all operational activities have to be stopped. Besides, workers exposed to serious and imminent danger are entitled to abstain from work, while retaining their salary and rights, until the necessary measures are put into practice.

In response to the Committee's question (Conclusion 2010), the report refers to the entry into force in July 2013 of Regulation No. 28709, which sets a maximum working time comprised between four and 7.5 hours daily for certain occupations, on account of health and safety rules (for example, a maximum of six hours daily for work performed in mercury blast-furnaces or exposed to cs-gas). In addition, a monthly health leave is provided for employees working with radiation during their service, in addition to their annual leave (Article 103 of the Public Servants Law No. 657).

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee previously noted (Conclusion 2010) that employees covered by Labour Act No. 4857 are entitled to a paid weekly rest of at least 24 uninterrupted hours every seven days. According to the report, no exception is provided for in the Labour Act. The average weekly working time for Civil Servants is regulated so that Saturdays and Sundays are off (Article 99 of the Civil Servants Law No. 657).

The Committee asks that the next report confirm that employees cannot forfeit their weekly rest period or have it replaced by a financial compensation. Furthermore it asks under what circumstances a rest day might be postponed and, in that case, whether there are circumstances under which a worker might have to work more than twelve days in succession before being granted a two day rest period.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Turkey is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

It recalls that under Article 2§6 of the Charter, workers must be provided, when starting employment, with written information covering at least the following essential aspects of the employment relationship or contract:

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

The report indicates that service conditions of civil servants, qualifications, instatement and progress, obligations, rights and responsibilities, salary and appropriations and other personal affairs are regulated by Civil Servants Law No. 657. The Committee asks the next report explicitly to confirm that all the elements of information provided for by Article 2§6 of the Charter (see above) are made available in writing to civil servants upon commencement of their employment.

In addition, the report states that under Section 8 of Labour Act No. 4857, the employment contract is not subject to any special form unless otherwise provided by the Labour Act. A written form is required for employment contracts with a fixed duration of one year or more. In cases where no written contract has been made, the employer is under the obligation to provide the employee with a written document, within two months at the latest, presenting the general and special conditions of work, the daily or weekly working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract. The Committee asks that the next report clarify whether the obligation to provide a written contract or document containing information on the essential working conditions applies to employment relationships of less than one year.

With reference to the question previously raised (Conclusion 2010), the Committee notes that it does not appear from the report that all essential aspects of the employment relationship or contract, as provided for by Article 2§6 of the Charter, are provided in writing to the employees upon commencement of their employment. It accordingly considers it not to be established that the situation is in conformity with Article 2§6 in this respect.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 2§6 of the Charter on the ground that it is not established that the right to information on the employment contract is fully guaranteed.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

It previously noted (Conclusion 2010) that, under Section 69 of Labour Act No. 4857, night is understood to be the period starting at the latest at 8 p.m. and ending at the earliest at 6 a.m. The Committee asks that the next report clarify who is considered to be a night worker.

The Committee also noted that it is obligatory for employees to undergo a medical examination prior to starting night work as well as regularly afterwards, at least once every two years. Employees are entitled to ask to be reassigned to daytime duties for reasons of health. The Committee asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

The Committee notes that according to Article 178 of the Civil Servants Law No 657 and by the Regulation on Procedures of Application of Overtime Work, the work exceeding 40 hours of general weekly duration of work of civil servants is defined as overtime work. Civil Servants can take leave in return for overtime work. One day of leave is calculated for every 8 hours of overtime work performed.

In this connection, the Committee recalls that granting leave to compensate for overtime is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked (Conclusions XIV-2, Belgium). It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.

The Committee considers that the time off granted in lieu of remuneration for overtime for civil servants is not of an increased duration. Therefore, the situation is not in conformity with the Charter on this point.

In reply to the Committee's question, the report states that the labour inspectors supervise the implementation of Article 41 of the Labour Law No 4857 which regulates the overtime remuneration. It notes that during the reference period 1513 violations of Article 41 were identified and administrative fines were imposed.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

The Committee refers to its conclusion under Article 20 (Conclusions 2012) where it took note of Article 5 of the Labour Law No 4857 which prohibits discrimination between the sexes in concluding an employment contract, in conditions of employment and in terminating a work contract. It further provides for equal pay for work of equal value (differential remuneration for similar jobs or for work of equal value is not permissible).

Guarantees of enforcement and judicial safeguards

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, that is, compensation which is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender (Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol). In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, Malta).

The Committee further recalls that when the dismissal is the consequence of a worker's reclamation about equal wages, the employee should be able to file a complaint for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If this reinstatement is not possible, he has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

The Committee asks what rules apply as regards the guarantees of enforcement of the equal pay principle, the burden of proof, and sanctions as well as for examples of domestic case law on equal pay litigation.

Methods of comparison and other measures

The Committee notes from the report that the Circular no. 2010/14 of the Prime Ministry (the Official Gazette no. 27591, 25 May 2010) was put into force with a view to strengthening the socio-economic status of women, ensuring equality of women and men in social life and enhancing employability of women.

The Committee takes note of measures envisaged by this Circular, such as the establishment of the National Board of Monitoring and Coordination of Employment of Women. Besides this, it is foreseen that the issue of equality of women and men, as well as the statistical data, will be included in strategic plans.

The Committee asks for statistical data concerning the pay gap of men and women in all sectors of activity (the unadjusted gap) as well as for work of equal value.

In its Conclusions XX-1 (2012) the Committee adopted the following Statement of Interpretation on Article 20 (Article 1 of the Additional Protocol of 1988):

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

• cases in which statutory rules apply to the working and pay conditions in more than one company;

• cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;

• cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

The Committee asks whether in equal pay litigation it is possible to make comparisons of pay and jobs outside the company directly concerned.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

It previously concluded (Conclusions 2010) that the situation in Turkey was not in conformity with Article 4§4 of the Charter on the ground that two months' notice was not reasonable beyond 15 years of service. It asked for details concerning the grounds for immediate dismissal, other cases of termination of employment, and whether workers were entitled to leave during their notice period for the purpose of seeking new employment.

Reasonable period of notice

Section 17, paragraph 2(d) of the Labour Act of 22 May 2003 (No. 4857), as amended by Law No. 5838 of 18 February 2009, sets out the following periods of notice:

- Two weeks below six months of service;
- Four weeks between six and 18 months of service;
- Six weeks between 18 and 36 months of service;
- Eight weeks beyond 36 months of service.

The representative of Turkey informed the Governmental Committee (Report concerning Conclusions 2010, §203) that section 27, paragraphs 1 and 2 of the Labour Act provides for leave of two hours per day, or the payment of the equivalent wages, for the purpose of seeking new employment.

The Committee notes from another source (ILO-EPLEX) that, although the Labour Act does not provide for severance pay, it refers to section 14 of the repealed Labour Act of 25 August 1971 (No. 1475), the provisions of which concerning severance payments remain in force (section 120 and transitional section 6 of the Labour Act). These provisions provide for severance pay equal to 30 days' wages per year of service in the case of dismissal of employees with at least 12 months of service:

- Subject to the notice periods provided for in section 17, paragraph 2 of the Labour Act;
- Which is immediate, on grounds of health or force majeure provided for in section 25-I and III of the Labour Act;
- On account of compulsory military service or upon qualification for an old-age or disability pension.

The Committee also notes that wrongful dismissal involving failure to give proper notice gives rise to the payment of three times the wages due for the period of notice (section 17, paragraph 6 of the Labour Act).

The Committee points out that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being mainly determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay must be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the present case, compensation provided for wrongful dismissal involving failure to give proper notice, is reasonable within the meaning of Article 4§4 of the Charter. So as to examine the situation of notice periods provided for in section 17, paragraph 2 of the Labour Act in view of the severance pay possibly applicable, it asks that the next report specify the application in

law and practice of the provisions in section 14, paragraph 1 and 2 of Act No. 1475. Pending receipt of such information it reserves its position on this issue.

The Committee also notes that the legislation provides for two hours of paid leave per day of notice for the purposes of seeking new employment.

Application to all workers

Under section 15, paragraphs 1 and 2 of the Labour Act, termination without notice or compensation is allowed during probationary periods, which are limited to two months, or four months by collective agreement. Section 11 of the Labour Act does not limit the renewal of fixed-term contracts, either in number or in duration, provided that the grounds for renewal of such contracts are maintained.

The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The lack of notice for dismissal during probationary periods (section 15, paragraphs 1 and 2 of the Labour Act) is, therefore, not in conformity with Article 4§4 of the Charter. Noting that the early termination of fixed-term contracts is also subject to the requirements of section 17, paragraph 2 of the Labour Act, but that such contracts may potentially be renewed on an unlimited basis, the Committee requests that the next report indicate whether the length of service taken into account for determining periods of notice and severance pay is in line with the total duration of the repeated contracts.

The Committee also considers that inappropriate lifestyles resulting in duly established health consequences and immoral and dishonourable conduct (grounds given in section 25-I(a) and (b), and 25-II of the Labour Act) correspond to serious offences, which are the sole exceptions justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania). This is, however, not true of the other cases of immediate dismissal on the grounds of long-term illness, force majeure or being taken into custody or arrested (grounds given in section 25-I, last paragraph, 25-III and 25-IV of the Labour Act). The lack of notice or compensation in these cases of dismissal (grounds given in section 25-I, last paragraph, and 25-IV of the Labour Act) is not in conformity with Article 4§4 of the Charter. The Committee asks for the next report to specify the application in law and practice of the provisions in section 14, paragraphs 1 and 2 of Act No. 1475 in respect of dismissal on the grounds of health or force majeure (grounds given in section 25-I and 25-III of the Labour Act). Pending receipt of such information it reserves its position on this issue.

The Committee also notes that under section 111, paragraph 2 of the Labour Act, working conditions in agricultural and forestry work are determined by the Ministry of Labour and Social Security. It asks for information concerning periods of notice and/or severance pay applicable in such work. It also requests information concerning work on call (section 14 of the Labour Act); gang contracts (section 16 of the Labour Act); dismissal on the grounds of refusal to accept substantial changes in working conditions (section 22, paragraph 1 of the Labour Act); other legal obligations which give rise to application of the period of notice provided for in section 31, paragraph 1 of the Labour Act.

The Committee further notes that section 4, paragraph 1 of the Labour Act excludes the following activities and employment relationships:

a. Sea and air transport;
b. Agricultural and forestry undertakings employing less than 51 employees;
c. Construction work relating to agriculture within the limits of family business;
d. Home work performed by family members or close relatives;
e. Domestic work;
f. Apprenticeship;
g. Sport;
h. Reinstated employees;
i. Undertakings with less than four employees falling within the definition given in section 2 of the Tradesmen and Craftsmen Act of 18 July 1964 (No. 507).

It therefore requests that the next report provide information on the period of notice and/or severance pay applicable to these categories of workers. It also asks for details of the reasons for termination of service and disciplinary dismissal provided for in the Civil Servants Act of 14 July 1965 (No. 657), as amended by Law No. 5655 of 9 May 2007.

Conclusion

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

- no period of notice is required for dismissal during a probationary period;
- no period of notice is required for dismissal on the grounds of long-term illness, custody or arrest.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

It previously concluded (Conclusions XVI-2 (2003), XVIII-2 (2007) and 2010) that the situation in Turkey was not in conformity with Article 4§5 on the ground that it had not been established that deductions from wages would not prevent workers from providing for themselves and their dependants. It asked that the next report provide an exhaustive list of the categories of workers not covered by the Labour Act of 22 May 2003 (No. 4857), as amended by Law No. 5838 of 18 February 2009, and the regulatory instruments protecting them. It also asked for information on the rules applied by the courts to protect the right of workers to limited deductions from their wages and the guarantees preventing workers from waiving this right.

The report states that there was no change in the situation during the reference period. The representative of Turkey has informed the Governmental Committee (Report concerning Conclusions 2010, §§239-243) that the possibility of waiving the right to limitation of wage deductions is not recognised under Turkish law and could be declared null and void in court.

The Committee notes that section 32, paragraph 1 of the Labour Act allows salaries to be paid to third parties. Employees may suspend work if wages are in arrears or unpaid for more than 20 working days (section 34, paragraph 1 of the Labour Act). The attachment, transfer or assignment of wages is limited to 25% of wages, with the exception of maintenance claims confirmed by judicial decisions (section 35 of the Labour Act). Deductions to cover fines must be provided for in the relevant collective agreement or employment contract and are limited to three days' salary per month (section 38, paragraphs 1 and 2 of the Labour Act). In the event of force majeure employees are paid half their regular wages during the waiting week defined in section 25-III of the Labour Act (section 40 of the Labour Act).

Section 4, paragraph 1 of the Labour Act excludes the following activities and employment relationships from the ordinary law:

- (a) Sea and air transport;
- (b) Agricultural and forestry undertakings employing less than 51 employees;
- (c) Construction work relating to agriculture within the limits of family business;
- (d) Home work performed by family members or close relatives;
- (e) Domestic work;
- (f) Apprenticeship;
- (g) Sport;
- (h) Reinstated employees;
- (i) Undertakings with less than four employees falling within the definition given in section 2 of the Tradesmen and Craftsmen Act of 18 July 1964 (No. 507).

The Committee notes that under section 113 of the Labour Act, workers of agricultural or forestry undertaking employing less than 51 employees and undertakings with less than four employés covered by the Tradesmen and Craftsmen Act (section 4, paragraph 1(b) and (i) of the Labour Act) are covered by the limitation on deductions from wages provided for by sections 32, 35 and 38 of the Labour Act. It also notes that the protection afforded by sections 32, 38 and 39 of the Maritime Work Act of 20 April 1967 (No. 854) is the same as that afforded by the equivalent provisions of the Labour Act.

The report also refers to the following additional grounds for deductions:

- Social contributions owed in accordance with the Social Insurance and Universal Health Coverage Act of 31 May 2006 (No. 5510) and the Unemployment Insurance Act of 25 August 1999 (No. 4447);
- Tax deductions in accordance with the Income Tax Act of 31 December 1960 (No. 193);
- Stamp duty debts under the Stamp Duty Act of 11 July 1964 (No. 488).

The report adds that workers who are not subject to ordinary law are protected by Articles 176, 330 and 331 of the Civil Code (Law No. 4721 of 22 November 2001) on the determination of maintenance payments and Articles 407 and 410 of the Code of Obligations (Law No. 6098 of 11 January 2011). Under section 83, paragraphs 1 and 2 of the Enforcement and Bankruptcy Act of 9 June 1932 (No. 2004), the attachable part of a worker's wages is that which exceeds the amount, established by the bailiff, necessary for the worker to provide for his or her dependants, and the debtor may request that deductions are limited to 25% of wages. Under section 71 of the Procedures for the Collection of Public Receivable Act of 21 July 1957 (No. 6183), the attachable portion of wages lies between one quarter and a third of the salary and is limited to 10% of the minimum wage. According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (ILO Convention No. 95 on the Protection of Wages (1949): Direct Request, adopted in 2013, published at the 103rd ILC session (2014)), there is no overall limit on deductions from wages protecting wages to the extent necessary to safeguard the minimum subsistence level for workers and their families, a deficiency compounded by wage arrears, which are a recurring problem in all sectors.

The Committee, observing that Turkey has not ratified Article 4§1 of the Charter, notes the concern expressed by the UN Committee on Economic, Social and Cultural Rights (Concluding Observations of 12 July 2011, §§17 and 20), about the low level of the minimum wage, which is insufficient to provide workers with a decent living for themselves and their families, a problem compounded by the large proportion of persons employed in the informal economy.

The Committee points out that the objective of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the present case, the circumstances in which deductions from wages are authorised are not clearly and precisely defined by the legal instruments (laws, regulations, collective agreements and case-law) in force. It considers that the available portion of 25% of the wage provided for by section 35 of the Labour Act and, even more so, the right to exceed this amount for the recovery of maintenance payments allows situations to persist in which workers receive only 75% or less of the minimum wage, an amount which does not enable them to provide for themselves or their dependants. This is also the case with the protected portion of the wage described in section 83, paragraphs 1 and 2 of the Enforcement and Bankruptcy Act. The Committee asserts that maintenance obligations in relation to family members should not be fulfilled to the detriment of the protection owed under Article 4§5 of the Charter.

The Committee also points out that, under Article 4§5 of the Charter, workers may not waive their right to limited deductions from wages and the way in which such deductions are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). It notes that, although decisions to waive the right to the limitation of deductions from wages are null and void from a legal viewpoint, section 38, paragraph 1 of the Labour Act allows parties to an employment contract to lay down the grounds for deductions to recover fines. It asks for information in the next report on the application of this provision in practice and reserves its position on the issue in the meantime.

The Committee asks for the next report to describe the general or special provisions governing the limitation of deductions from wages in activities and employment relationships excluded from the ordinary law under section 4, paragraph 1(a) to (h) of the Labour Act (such as air transport; to construction work related to agriculture within the limits of family business; home work performed by family members or close relatives; domestic work). It also asks for detailed information on the limitation on deductions from wages applicable to workers covered by the Civil Servants Act of 14 July 1965 (No. 657), as amended by Law No. 5655 of 9 May 2007.

The Committee also notes from the previous report that ILO Convention No. 95 on the Protection of Wages (1949), which is in force in Turkey, takes precedence over domestic legislation, and asks for information on the way in which this precedence is applied in court practice.

It also asks for information on the limits and, if applicable, the absolute limit on attachment protecting workers in the event of simultaneous deductions on concurrent grounds. Lastly, it asks for the next report to complete the list with any grounds for deductions from wages not yet mentioned (such as reimbursement of advances; trade union dues; defective output quality, etc.) and to specify the compensation of damage caused to employers, as authorised by Article 333 of the Code of Obligations to the extent deemed by the employer to be compatible with the basic needs of employees and their families.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

Legal framework

In the frame of its candidacy to the EU, Turkey is in the process of transposing Directive No. 2002/14/EC of the European Parliament and of the Council of 11 March 2002 (which establishes a general framework for informing and consulting employees in the European Community) into its national legislation. The Committee wishes the next report to provide information on the transposition of this Directive.

The Committee notes that trade unions are the sole employee representation body. The Law on Trade Unions and Collective Labour Agreements No. 6356 contains provisions on shop stewards in the private sector and the Law on Public Servants Trade Unions and Collective Labour Agreement No. 4688 contains provisions on trade union representatives in the public sector.

Scope

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

States may exclude from the scope of this provision those undertakings with a staffing level below a threshold laid down by national legislation or practice. The Committee considers that thresholds comparable with those authorised by Directive 2002/14/EC – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state – are compatible with the Charter.

In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (see judgments of the Court of Justice and the European Union, *Confédération générale du travail* and Others, Case No. C-385/05 of 18 January 2007, and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014).

Personal scope

Pursuant to Article 22 of the Labour Law No. 4857 the employer shall provide a prior written notice to the employee in case of changes in working conditions, working rules or workplace practices. The Committee wishes to know whether and, if so, how in practice trade union representatives are informed of any matter that could affect their working environment. The Committee asks also whether the personal scope mentioned above corresponds to the scope of Turkish legislation, particularly as regards the calculation of these minimum thresholds for the imposition of the obligation.

In the public sector, the Law on Public Servants Trade Unions and Collective Labour Agreement No. 4688 establishes the Public Employees' Advisory Board and the Administrative boards,

which are the forums where public employer representatives and civil servants trade unions representatives express opinions on working conditions in the public sector.

Concerning the specific issue of health and safety at work, the Committee notes that the Law on Occupational Health and Safety No. 6331 entered into force on 30 June 2012. Pursuant to Article 3 of this Law, a workers' representative is defined as any worker authorized to represent workers in matters of health and safety at work. There should be one representative for enterprises between two and 50 workers. Article 16 of this Law requires that the employer inform the workers or their representatives about health and safety risks. Article 18 of this Law provides that the employer shall consult workers or their representatives be they trade unions or representatives in the meaning of the Law on work health and safety issues. The Law further indicates that this right exists independently of the number of employees within the undertaking.

Material scope

As mentioned above, the right of workers to be informed and consulted concerns working conditions, working rules, workplace practices and health and safety at work. The Committee asks whether the material scope concerning the right of workers to be informed includes the economic and financial situation of the undertaking (See Article 21 a) of the Charter).

Remedies

Pursuant to Article 22 of the Labour Law No. 4857, changes that are not in conformity with the procedure mentioned above and not accepted by the employee in written form within six working days shall not bind the employee. An employee who deems his/her right to be violated may file a suit before the appropriate court.

Supervision

The report does not contain information on this point. The Committee asks that the next report contain information on the body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wishes to know what the powers and operational means of this body are, as well as to receive updated information on its decisions.

Conclusion

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

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

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

Working conditions, work organisation and working environment

Article 27 of the Law on Trade Unions and Collective Labour Agreement No. 6356 deals with the appointment and duties of trade union representatives within the workplace. Thus trade union representatives have to inform employees on relevant labour legislation, resolve workers' complaints, ensure working cohesion between workers and employers, observe the rights and benefits of workers, facilitate the application of working conditions envisaged in labour law and collective agreements, ensure consensus among employees in respect of work organisation, working environment. The Committee wishes the next report to indicate what happens in undertakings where there are no trade union representatives.

For the public sector, the Committee notes that Article 22 of the Law on Public Employees and Collective Agreement No. 4688 provides for the establishment of administration boards composed of representatives elected among trade union members and by the vice-employer. These boards convene twice a year. The Committee wishes the next report to indicate what the competences of these boards are in relation to the right of workers to take part in the determination and improvement of working conditions and working environment.

Protection of health and safety

The Committee recalls that according to the Appendix, Article 22 affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application, and that the right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Charter. For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22.

According to the Law on Occupational Health and Safety No. 6331, the right to participate in the decision-making process in matters such as the protection of health and safety within the undertaking takes a different form following the number of employees:

- in undertakings with more than 50 employees, Article 22 of the Law provides for the constitution of boards of occupational health and safety, where workers or their representatives are offered the possibility to take part in meetings dealing with these issues and express their opinion. The constitution, duties and mandates of these boards are regulated by the Regulation on boards of occupational health and safety. In this respect, the Committee requests that the next report provide detailed information on this Regulation;
- in undertakings with less than 50 employees, Article 18 of the Law provides for the possibility for workers of expressing their opinions on these issues to their employer within the framework of negotiations. The Committee wishes the next report to indicate how these negotiations function.

Organisation of social and socio-cultural services and facilities

The Committee notes that employee participation in the organisation of social and socio-cultural services and facilities is guaranteed through participation of their representatives in the conclusion of collective agreements.

Enforcement

The report does not provide any information concerning legal remedies and sanctions in cases of breach of the right of workers to take part in the determination and improvement of working conditions, work organisation and working environment. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

According to the Law on Occupational Health and Safety No. 6331, workers and/or their representatives are entitled to appeal before the authority responsible for the protection of safety and health at work if they consider that their right to participate in the decision-making process concerning the protection of health and safety within the undertaking is not respected. Article 26 of this Law imposes an administrative fine on the employer who fails to fulfill its obligation. The Committee asks the next report to provide detailed information on the authority responsible for the protection of safety and health at work. It also wishes to know whether there exists a possibility of appeal to the courts when these rights are not respected.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 22 of the Charter on the ground that it has not been established that legal remedies are available to workers for infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The Committee recalls that Article 26§1 requires States parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners, they should inform workers about the nature and behaviour in question and the available remedies.

Article 417 of the Code of Obligations No. 6098, which entered into force in July 2012, sets the employer's obligation "to protect and show respect to the personality of the employee, to establish order in the workplace based on the principle of honesty", and "especially to take all necessary measures to protect the employees from psychological and sexual harassment and to protect those currently harassed from more suffer". In response to the Committee's request for information, the report states however that there is no regulation concerning preventive measures yet.

The Committee asks that the next report indicate the measures taken in order to ensure effective protection from sexual harassment. It furthermore asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

Liability of employers and remedies

The Committee notes that no specific provision exists, defining and prohibiting sexual harassment in the workplace. It recalls that, for the purposes of Article 26§1 of the Charter, sexual harassment is defined as a breach of equal treatment characterised by the adoption, towards one or more persons, of preferential or retaliatory conduct, or other forms of insistent behaviour, which may undermine their dignity or harm their career and that, irrespective of admitted or perceived grounds, harassment creating a hostile working environment shall be prohibited and repressed in the same way as acts of discrimination, independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law. Article 26§1 requires an effective protection to be afforded to workers against harassment by domestic norms, irrespective of whether this is a general anti-discrimination act or a specific law against harassment.

The principle of non-discrimination, *inter alia* on grounds of sex, is enshrined in Article 5 of the Labour Code, No. 4857. Article 24 of the same Code provides for the employee's right to break the contract for just cause "for immoral, dishonourable or malicious conduct or other similar behaviour", namely:

- If the employer is guilty of any speech or action constituting an offence against the honour or reputation of the employee or a member of the employee's family, or if she/he harasses the employee sexually;
- If the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honour;

- If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct.

In response to the Committee's question, the report confirms that a worker is also entitled to break the contract if he/she is subject to sexual harassment by another employee or a third person (such as independent contractors, self-employed workers, visitors, or clients). The Committee asks that the next report clarify whether in such cases the employer can be held responsible for not having taken preventive and/or remedial measures, and whether any liability of the employer apply in cases where third persons suffer sexual harassment from persons under the employer's responsibility.

An employee sexually harassing another employee can have his/her employment contract terminated without notice by the employer, under Article 26 of the Labour Code. Disciplinary sanctions and dismissal are also applicable in case of sexual harassment within the public administration, respectively for "not acting within the framework of public moral and good manners" (Article 125 of the Civil Servants Law No. 657), and "for taking disgraceful and inglorious actions which are not complying in character and extent with the title of civil servant". The criminal sanction for sexual harassment, under Article 105 of the Penal Code No. 5237 and upon complaint of the victim, is three months to two years' prison, which can be increased by a half "in case of commission of these offenses by undue influence based on hierarchy or public office or by using the advantage of working in the same place with the victim" and "if the victim is obliged to leave the business place for this reason, the punishment to be imposed may not be less than one year".

As regards the procedures available, the report states that, apart from the right to break the contract, the victim of sexual harassment can file a penal complaint and request the adoption of prevention and remedial measures. The Committee asks that the next report clarify what procedures before an independent body, other than criminal procedures, are available to victims or sexual harassment in the workplace – including in respect of civil servants – in the light of relevant case law examples. It also reiterates its question as regards the right not to be retaliated against for upholding the right to protection from sexual harassment. In the meantime, in the absence of sufficient indications of the employer's liability, the effectiveness of the procedures and of the existence of guarantees against retaliation, the Committee does not consider it established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

Burden of proof

In response to the Committee's question, the report indicates that "the employee claiming of being sexually harassed should prove this claim through medical report, witness statement, registration file and showing the situations unexpected in daily life". The Committee asks whether this means that, in sexual harassment cases (others than those dealt with by criminal courts) the plaintiff bears the burden of proof. It recalls in this respect that from the procedural standpoint, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the conviction of the judge or judges.

Redress

The Committee has previously noted that a sexually harassed worker who quits his/her job under Article 24 of the Labour Code is entitled to severance pay, on condition that he/she has

served for at least one year, and to discrimination compensation. In addition, the report states that Article 49 of the Code of Obligations provides that whoever harms somebody in consequence of a "quasi-delict" and unlawful legal acts has to indemnify this person. Article 417 of the same Code further provides that "the compensation by the employer of the damages – caused by her/his conduct contravening the law and contract – such as the death of the employee, the damage of the employee's physical integrity or the violation of her/his personal rights, are subject to the provisions of responsibility arising from the contradiction to the contract".

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

The Committee takes note that a right to compensation exists under the abovementioned provisions of the Labour Code and Code of Obligations and reiterates its request of information as regards the right to reinstatement of victims of sexual harassment, including when the person has been pushed to resign because of the sexual harassment. Pointing out that the effectiveness of the legal protection against sexual harassment depends on how the domestic courts interpret the law as it stands, the Committee asks that the next report provide relevant examples of case law in the field of sexual harassment. In the meantime it considers it not to have been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

Prevention

Under Article 26§2, States Parties are required to take adequate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment. In particular, in consultation with social partners, they should inform workers about the nature and behaviour in question and the available remedies.

In response to the Committee's request of information on the preventive measures adopted, the report indicates that the Prime Ministry has issued a circular letter in 2011 (No. 2011/2, published in the Official Gazette No. 27879 of 19 May 2011) which stresses the importance of preventing psychological harassment, in the framework of occupational health and safety and for enhancing labour harmony. According to the circular, it is the employer's responsibility to take all the necessary measures to prevent harassment and collective agreements should provide for preventive measures. A psychological support hotline has been set up (ALO 170), to provide advice and support, and a Board against moral harassment has been created, within the Ministry of Labour and Social Security, to follow, evaluate and draft preventive policies with the participation of the State Personnel Directorate, NGOs and relevant parties. The inspection personnel will examine the claims of moral harassment with due care, while ensuring the protection of individual privacy.

An Action Plan on the implementation of the circular has been issued for the period 2012-2014, focusing on the following priority activities:

- Institutional capacity for the prevention of moral harassment in the workplace;
- Training and awareness-raising on prevention of moral harassment in the workplace (2 258 mid-level and high-level managers have been trained in 47 towns, according to the report, and further activities are planned);
- Data collection, analysis and evaluation for the prevention of moral harassment in the workplace;
- Legislative developments aimed at preventing moral harassment in the workplace.

The Committee takes note of the activities planned and asks the next report to provide updated information on the measures taken to implement them.

Liability of employers and remedies

The abovementioned circular of 2011 defines moral harassment as a deliberate and systematic behaviour by which an employee is humiliated, degraded, socially excluded, intimidated, has his/her personality and dignity violated and is subjected to (hostile) ill treatment. This definition is not however included in the Labour Code (No. 4857), which rather implicitly considers harassment as discrimination, and prohibits it whether it occurs on grounds of language, sex, political opinion, philosophical belief, religion and confession and similar reasons (Article 5). Discrimination on account of trade union's activities is dealt with on the other hand by specific provisions (Law on Trade Unions and Collective Labour Agreements, No. 6356).

According to the report, an employee who is a victim of harassment is entitled to terminate the employment contract (Article 13 of the Law on Occupational Health and Safety, No. 6331). In particular, Article 24 of the Labour Code (No. 4857) provides for such a right in cases of

"immoral, dishonourable or malicious conduct or other similar behaviour". The Committee previously noted (Conclusion 2010) that this applies when the employer morally harasses the employee or if the employer, despite being informed that an employee is harassed by another employee or a third person, fails to take adequate measures. The Committee asks that the next report clarify whether in such cases the employer can be held responsible for not having taken preventive and/or remedial measures, and whether any liability of the employer applies in cases where third persons suffer sexual harassment from persons under the employer's responsibility.

If an employee morally harasses another employee, the employer has the right to terminate the employment contract without having to comply with the prescribed notice period. In addition, the report states that:

- under Article 117 of the Penal Code, No. 5237, any person who violates the freedom of work and labor by using violence or threat or performing an act contrary to the law, is sentenced to imprisonment from six months to two years and imposition of punitive fine upon complaint of the victim.
- under Article 125 of the Penal Code, any person who acts with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine.

As regards the procedures available, the report states that, apart from the right to break the contract, the victim of harassment can file a penal complaint and request the adoption of prevention and remedial measures. The Committee asks that the next report clarify what procedures before an independent body, other than criminal procedures, are available to victims or harassment in the workplace, in the light of relevant case law examples. It also reiterates its question as regards the right not to be retaliated against for upholding the right to protection from moral harassment. In the meantime, in the absence of sufficient indications of the employer's liability, the effectiveness of the procedures and of the existence of guarantees against retaliation, the Committee does not consider it established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

Burden of proof

In response to the Committee's question, the report indicates that "the employee claiming of being harassed should prove this claim through medical report, witness statement, registration file and showing the situations unexpected in daily life". The Committee asks whether this means that the plaintiff bears the burden of proof and whether a shift in the burden of proof applies in harassment cases, except those dealt with by criminal courts. It recalls in this respect that from the procedural standpoint, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the conviction of the judge or judges.

Redress

The Committee has previously noted that a worker who quits his/her job under Article 24 of the Labour Code on account of harassment is entitled to severance pay, on condition that he/she has served for at least one year, to discrimination compensation of up to four month's wages and the restoration of his/her rights. During the reference period, 18 breaches of the principle of equal treatment (Article 5 of the Labour Code) were found, and administrative fines were imposed for a total amount of TRY 15 630 (€ 6 600 at the rate of 31 December 2012).

In addition, the report states that Article 49 of the Code of Obligations provides that whoever harms somebody in consequence of a "quasi-delict" and unlawful legal acts has to indemnify this person. Article 417 of the same Code further provides that "the compensation by the employer of the damages – caused by her/his conduct contravening the law and contract – such as the death of the employee, the damage of the employee's physical integrity or the violation of her/his personal rights, are subject to the provisions of responsibility arising from the contradiction to the contract".

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

The Committee takes note that a right to compensation exists under the abovementioned provisions of the Labour Code and Code of Obligations and reiterates its request for information as regards the right to reinstatement of victims of harassment, including when the person has been pressured to resign because of the moral harassment. Pointing out that the effectiveness of the legal protection against moral harassment depends on how the domestic courts interpret the law as it stands, the Committee asks the next report to provide relevant examples of case law in the field of moral harassment. In the meantime it considers it not to have been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

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

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

Protection granted to workers' representatives

The Committee notes that trade unions are the sole employee representation body. The Law on Trade Unions and Collective Labour Agreements No. 6356 contains provisions on shop stewards in the private sector and the Law on Public Servants Trade Unions and Collective Labour Agreement No. 4688 contains provisions on trade union representatives in the public sector.

According to the Law on Trade Unions and Collective Labour Agreement No. 6356, an employer shall not terminate the employment contract of shop stewards unless there is a just cause for termination, which shall be indicated in a clear and precise manner. The shop steward or the trade union to which he/she belongs shall have the right to apply to the competent court within a month of the communication of the notice of termination. The court has to apply fast-hearing procedures. In case of appeal of the decision rendered by the court, the decision of the Supreme Court shall be final. If the court decides that the trade union representative is to be reinstated, the termination shall be cancelled and the employer shall pay him/her his/her full wages and all other benefits between the termination date and the date of the decision. Moreover, unless there is a written consent of the shop steward, the employer shall not change the workplace of a shop steward nor make drastic changes in his work. Otherwise, the change shall be considered as void.

The Committee recalls that protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal (Conclusions 2003, France).

The Committee asks that the next report provide information on the protection granted by the legislation to workers' representatives in their employment other than dismissal.

The Committee recalls that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has for example found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010) where the protection is extended for one year after the end of mandate of workers' representatives or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate.

The Committee asks to be informed as to how long the protection for workers' representatives lasts after the cessation of their functions.

Facilities granted to workers' representatives

The Committee recalls that the facilities may include for example those mentioned in the ILO Recommendation R143 concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their

functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee notes that according to Article 27 of the Law on Trade Unions and Collective Labour Agreement No. 6356, shop stewards shall carry out their duties on condition that their own work and the work discipline at the workplace are not hindered. Shop stewards shall be provided with appropriate means to carry out their duties in the workplace quickly and efficiently. The Committee requests that the next report provide further information on the facilities granted to workers' representatives. In the meantime, it reserves its position in this respect.

In addition, the Committee asked in its previous conclusion to be informed on travelling expenses. Given the lack of answer, the Committee reiterates its question.

Conclusion

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

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

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

Definition and scope

The Committee notes that there have been no legislative developments during the reference period.

Prior information and consultation

The Committee notes that there have been no legislative developments during the reference period. Article 29 of the Labour Act No 4857 defines collective redundancies and provides that consultations with union shop-stewards should take place concerning measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimise their adverse effects on the workers concerned. A document showing that the said consultations have been held shall be drawn up at the end of the meeting. Notices of termination shall take effect 30 days after the notification of the regional directorate of labour concerning the intended lay-offs.

Under Article 29 of the Charter the employers are obliged to provide employees' representatives with all relevant information necessary to conduct information and consultation process. In principle, all relevant information shall be delivered prior to the consultation, but also during the consultation at the request of workers' representatives or without it (Statement of Interpretation on Article 29, General Introduction to Conclusions 2014).

Moreover, the information and consultation process should be directed towards not only the possible avoidance or minimisation of the scope of collective redundancies, but also at mitigating their consequences. It should therefore cover the possibility of undertaking actions aimed at retraining and redeployment of the workers concerned. As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job.

The Committee asks what measures are taken in this regard.

Preventive measures and sanctions

In reply to the Committee's question as to what sanctions apply in case of collective redundancies, the report states that under the inspection programmes undertaken by the Presidency of Labour Inspection Board, the implementation of the regulations envisaged by Law No 4857 are monitored. The Committee notes that according to Article 100 of the Labour Act No 4857 the employer or his representative who lays off employees in contravention of the provisions of Article 29 of this Act shall be liable to a fine. The Committee asks for the updated amount of the fine, expressed in euros, using the exchange rate applicable in the reference period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 29 of the Charter.