



European Social Charter

European Committee of Social Rights

Conclusions XVII-2 (Turkey)

Articles 7, 11, 14, 17 and 18 of the Charter

The text of the conclusions may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports; it adopts “conclusions”, in respect of collective complaints; it adopts “decisions”.

A presentation of the Charter is contained in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Turkey on 24 November 1989. The time limit for submitting the 11th report on the application of this treaty to the Council of Europe was 31 March 2004 (reference period: 1 January 1999 to 31 December 2002) and Turkey submitted it on 4 June 2004.

The report concerned the rights constituting the second part of the “non-hard core” provisions of the Charter:

- Article 7 (right of children and young persons to protection);
- Article 8 (right of employed women to protection);
- Article 11 (right to protection of health);
- Article 14 (right to benefit from social welfare services);
- Article 17 (right of mothers and children to social and economic protection);
- Article 18 (right to engage in a gainful occupation in the territory of other Contracting Parties).

Turkey has accepted these articles with the exception of Articles 7§1, 7§2, 7§10 and 8.

¹ The Conclusions as well as states reports can be consulted on the Council of Europe’s internet site (www.coe.int) under Human Rights.

The present chapter on Turkey contains 16 conclusions:

- 1 case of conformity: Article 18§1.
- 13 cases of non-conformity: Articles 7§3, 7§4, 7§5, 7§6, 7§8, 7§9, 11§1, 11§2, 11§3, 14§1, 17, 18§2 et 18§3.

In respect of the other 2 cases, that is Articles 14§2 and 18§4, the Committee needs further information in order to assess the situation. It asks the Turkish Government to include the answers to these questions in the report to be submitted before the 31 March 2008.

The next Turkish report will concern the accepted provisions of the following:

- the right to work (Article 1);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right of the family to social, legal and economic protection (Article 16);
- the right of migrant workers and their families to protection and assistance (Article 19).

It concerns the reference period 1 January 2003 to 31 December 2004.

The report must be submitted to the Council of Europe before 30 June 2005.

Article 7 – Right of children and young persons to protection

Paragraph 3 – Prohibition of employment of children subject to compulsory education

The Committee notes from the Turkish report that under the Act No. 222 of 1961 concerning Primary Education, compulsory education in Turkey ends at the age of 14 or 15 depending on the age at which a child started school. It recalls that in 1997 compulsory schooling was extended from five years to eight.

Pursuant to Section 59 paragraph 1 of the 1961 Act, children of compulsory schooling age not attending any of the compulsory primary education institutions cannot be employed for paid or unpaid work in any public or private workplace.

The Committee recalls that under the Labour Act No. 1475 of 1971 employment of children under the age of 15 years was prohibited but that the Labour Act did not cover all sectors of economy and did in particular not apply to firms with less than three workers and the agricultural sector where the employment of children is most frequent. It also recalls that workplaces not subject to the Labour Act were governed by the Act on the Protection of Public Health, Section 173 of which prohibits the employment of children under the age of 12 years. The Committee has consistently held this situation not to be in conformity with the Charter. There have been no changes to the legal situation during the reference period.

However, the Committee notes that the new Labour Act No. 4857 entered into force on 10 June 2003, i.e. outside the reference period. Section 71 of the Act stipulates that work conducted by children cannot prevent them from regularly attending school and continuing vocational education. Pursuant to this provision, children who attend school may work for a maximum of two hours per day and ten hours per week, provided that working hours are outside school hours. During holidays, working hours may not exceed seven hours per day and thirty five hours per week. Article 4 of the new Labour Code excludes from its scope of application, *inter alia*, businesses or enterprises carrying out agricultural and forestry work and employing less than 50 workers, houses and businesses where handicrafts are performed among members of a family and relatives, domestic

services as well as apprentices. The Committee wants to receive the Governments comments on whether there are measures in place to safeguard the full benefit of compulsory education for children working in these excluded sectors. It further asks whether under the new legislation children are allowed to work before school begins in the morning and whether rest periods are guaranteed during school holidays.

The Committee recalls that within the scope of the ILO International Programme for the Elimination of Child Labour (IPEC) the 1994 Child Labour Survey was carried out in cooperation with the State Institute of Statistics (SIS). A second Child Labour Survey was carried out in October 1999 within the scope of the “Statistical Information and Monitoring Program on Child Labour”.

The report contained data established by the Institute on the labour force status of persons in the age group 12-14 years which shows a decreasing trend in the number of children in employment since the year 1988. The proportion of working children within the age group 12-14 was 26.4% in 1988 and dropped to 11.3% in 2000. The Committee notes that this is an improvement but still considers the number of children in employment in this age group to be significant.

The findings of the 1999 Child Labour Survey indicate a very significant decline in the number of working children in the age group 6-17, namely from 8.54% (974,000) in 1994 to 4.24% (511,000) in 1999, i.e. a reduction of 50% within this period. The 1999 Survey also shows a decreasing trend in the proportion of children working in economic activities and attending school at the same time (3.9% of the children in the 6-14 age group in 1994 as opposed to 1.6% in 1999). The number of children in this age group not attending school decreased from 1.5 million in 1994 to 1.4 million in 1999. The Committee notes that the report does not contain corresponding data for the reference period and wishes to be provided with the relevant figures for the reference period in the next report.

In reply to the Committee's request for further information on measures taken by the authorities to further reduce the incidence of child labour in Turkey, the report refers, *inter alia*, to the ratification of the ILO Minimum Age Convention No. 138 in 1998 and the Worst Forms of Child Labour Convention No. 182 in 2001. It furthermore

makes reference to the ILO/IPEC programme under which 101 different projects were implemented in Turkey during the period of 1992-2001. The 8th Five-Year Development Plan, which prescribes economic and development priorities of the Government contains provisions and measures which are directly or indirectly aimed at the elimination of child labour such as the increase in the level of family income, provision of social welfare and social protection to families and reduction of school expenses for families in need.

Furthermore, cooperation between public organisations, trade unions, associations, foundations etc. has led to the establishment of an institutional structure dealing directly or indirectly with the elimination of child labour. In order to ensure such cooperation, a Board of Advisors and a National Steering Committee have been created within the Ministry of Labour and Social Security. As a result of this cooperation, projects were implemented such as e.g. “the orientation of the children working in the streets to education” project conducted by the Ministry of Labour and Social Security, the Ministry of National Education, the Greater Izmir Municipality and the General Directorate of Social Services and Child Protection. According to the findings of the General Directorate of Social Services and Child Protection referred to in the report, as of the end of June 2003 the number of children living and working in the streets was 23,872 of which 1,312 who had no previous schooling and could be made to start attending school and 4,382 could be helped to continue school by providing them with social assistance.

Further measures included professional counselling services, vocational training and awareness raising campaigns to prevent families from making their children work. Training concerning the problem of child labour was provided to labour inspectors, teachers and representatives of various organisations on local and regional level. The Committee acknowledges the efforts made by the Government to combat child labour and wishes to be kept informed on the development of such measures in future reports.

The Committee concludes that the situation in Turkey is not in conformity with Article 7§3 of the Charter on the following grounds:

- children subject to compulsory schooling may be employed in certain sectors of the economy;

- Turkish law does not ensure that they are not deprived of the full benefit of compulsory education.

Paragraph 4 – Length of working time

The Committee notes from the Turkish report that there have been no changes to the situation, which it has previously found not to be in conformity with the Charter.

It therefore concludes that the situation in Turkey is not in conformity with Article 7§4 of the Charter because, under Section 61 of the Labour Act, children under 16 may work up to 45 hours per week.

Paragraph 5 – Fair pay

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

Under Article 7§5 of the Charter, young workers' wages may be lower than adult workers' starting or minimum wages but the difference must be reasonable and the gap must close quickly. For 15-16 year-olds, a wage 30% lower than the adult starting or minimum wage is acceptable. For 16-18 year-olds, the difference must not exceed 20%.

The previous Conclusions in respect of Turkey were all deferred because of a lack of sufficient information both on young workers' wages and on apprentices' allowances.

With regard to young workers, the Committee notes that, despite its repeated requests, the present report does not provide information showing: (i) the difference between the net starting or minimum wages of young workers and the net starting or minimum wages of adult workers; and (ii) the difference between the net starting or minimum wages of young workers and the net average wage of adult workers.

With regard to the first question, the report states that young workers between 16 and 18 years of age are entitled to the same minimum wage than adult workers¹, while young workers under 16 years of age were entitled to approximately 85% of the minimum wage². However

¹ 250,875,000 Turkish Liras (TL), approximately € 132.

² 213,210,000 LT, approximately € 112.2.

the report does not say whether these figures correspond to minimum wages calculated net.

Furthermore, the report does not provide information on the difference between the net starting or minimum wage and the net average wage of adult workers. This information is necessary in order to assess whether the reference wage is itself sufficient under the Charter. Accordingly, the Committee requests that this information be provided in the next report.

With regard to apprentices, the Committee recalls that their allowances must equal at least one third of the adult minimum or starting wage at the beginning of the apprenticeship and at least two thirds towards the end. The report states that, under Section 25 of the Apprenticeship and Vocational Training Act, apprentices are entitled to an allowance that cannot be less than 30% of the minimum wage applying to young workers of the same age. However, it does not provide any evidence that, in practice apprentices receive at least one third of the adult minimum or starting wage at the beginning of the apprenticeship and at least two thirds towards the end.

The Committee concludes that the situation in Turkey is not in conformity with Article 7§5 of the Charter on the ground of a repeated lack of information providing evidence that apprentices are entitled to fair allowances throughout their apprenticeship.

Paragraph 6 – Time spent on vocational training

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

The previous Conclusions were all deferred because of a lack of sufficient information showing that: (i) under Turkish law, time spent by young workers on vocational training during normal working hours, with the consent of the employer, is considered as working time and remunerated as such; and (ii) relevant law applies to at least 80% of young workers concerned.

The report only provides information on apprentices and students attending vocational training and, once again, does not provide the requested information.

The Committee concludes that the situation in Turkey is not in conformity with Article 7§6 of the Charter on the ground of a repeated lack of information providing evidence that time spent by young workers on vocational training is considered as working time and that this right applies to at least 80% of young workers receiving training.

Paragraph 8 – Prohibition of night work

The Committee notes from the Turkish report that there have been no changes to the situation, which it has previously found not to be in conformity with the Charter.

It therefore concludes that the situation in Turkey is not in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

Paragraph 9 – Regular medical examination

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

In its previous conclusion (Addendum to Conclusions XV-2, pp. 253-254), the Committee found that the situation was not in conformity with the Charter on the following grounds :

- the provisions of the Labour Act on compulsory regular examinations of young workers only applied to industrial work and not to other relevant sectors, in particular farming;
- the regular medical examinations required under specific regulations applying to the shipping industry were not sufficiently frequent (every two years).

With respect to the second ground of non-conformity, the report shows that the situation has been brought into conformity with the Charter. Under Section 82 of the Regulation on Seafarers of 31 July 2002, young workers under 18 years of age must now undergo regular medical examinations every 12 months.

However, the Committee notes that the situation with regard to the first ground of non-conformity has not changed.

The Committee concludes that the situation in Turkey is not in conformity with Article 7§9 of the Charter on the ground that the provisions of the Labour Act on compulsory regular examinations of young workers only apply to young workers employed in the industrial sector.

Article 11 – Right to protection of health

Paragraph 1 – Removal of the causes of ill-health

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

State of health of the population – General indicators

Life expectancy and principal causes of death

According to World Health Organisation (WHO) data¹ life expectancy in Turkey in 2002 was 72.2 for women and 67.9 for men. These figures are higher than in the previous reference period (respectively 70.8 and 66.2 in 1997). The main causes of death are cardiovascular diseases, followed by cancers.

In the absence of detailed information, the Committee asks for information in the next report, including facts and figures, on the main causes of death and steps taken to improve the situation.

Infant and maternal mortality

The Committee recalls that it found that the situation was not in conformity with the Charter because of the excessively high rates of infant mortality (Addendum to Conclusions XV-2, p. 256). It notes from WHO data that reducing mortality among children aged 0 to 5 is one of the government's main priorities and that measures and programmes are designed to improve the situation (in particular, the prevention of maternal and prenatal mortality programme and the large-scale campaign launched in 2002).

However the Committee notes that the infant mortality rate is still very high: 43 deaths per 1,000 live births in 2002. The Committee recalls that in order to comply with Article 11§1 of the Charter, this rate should be as close as possible to zero.

In the absence of information indicating that the situation is currently in conformity with the Charter, the Committee concludes that the

¹ Data consulted on the WHO Internet site: <http://www.who.int/countries>.

situation is still not in conformity with Article 11§1 of the Charter due to the excessively high rates of infant mortality.

The Committee insists that the next report provide up-to-date information on the maternal mortality rate. If the necessary information is not included in the next report there will be nothing to show that Turkey is in conformity with Article 11§1 of the Charter.

Health care system

Access to health care

The Committee refers to its previous conclusion (Addendum to Conclusions XV-2, pp. 257-258), where it found that the situation was not in conformity with the Charter because of the manifestly inadequate budget for health care and because the equipment and health personnel did not guarantee access for the population to health care of a satisfactory quality throughout the country.

The information in this report is too general to give the Committee a full picture of the situation. However, it notes that the previously identified shortcomings remain. The Committee notes that 2.43% of the 2003 general budget was allocated to the Ministry of Health (3.8 % in 1998)¹. Moreover, the number of general practitioners and specialist doctors (respectively 1.3 and 0.6 per 1,000 population in 2001) is still inadequate and their uneven distribution between urban and rural areas (in the case of general practitioners, respectively 43,236 and 5,373) remains a source of concern. The Committee also asks for statistics in the next report on the number of hospitals and hospital beds per 1000 population, to enable it to assess the situation.

The Committee recalls that it examines the conformity of the situation in the light of the Parliamentary Assembly of the Council of Europe's Recommendation 1626 (2003) on "reform of health care systems in Europe: reconciling equity, quality and efficiency". This Recommendation invites member states to take as their main criterion for judging the success of health system reforms effective access to health care

¹ European Commission, 2003 regular report on Turkey's progress towards accession, 5 November 2003 (in: <http://www.europa.eu.int>).

for all, without discrimination, as a basic human right. It therefore asks for up-to-date information in the next report, including detailed facts and figures, on access to care for the most disadvantaged groups.

In its previous conclusion, the Committee referred to the long waiting lists for access to hospital based care. There is nothing in the report on this subject. The Committee asks for information on the management of waiting lists and waiting times in health care, which it will consider with reference to Committee of Ministers Recommendation No. R (99) 21 on criteria for such management. If the necessary information is not included in the next report there will be nothing to show that Turkey is in conformity with Article 11§1 of the Charter.

Conclusion

The Committee concludes that Turkey is not in conformity with Article 11§1 of the Charter on the following grounds:

- it has not been established that the infant mortality rate has been sufficiently reduced;
- the budget for health care and equipment and health personnel guarantee access to health care throughout the country.

Paragraph 2 – Advisory and educational facilities

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

Encouraging individual responsibility

Health education in schools

The Committee notes that AIDS prevention courses have been introduced in schools but the report acknowledges that they do not cover all pupils.

The Committee repeats its request for up-to-date information on programmes and campaigns to make pupils more aware of the need for individual responsibility for avoiding harmful lifestyles. It recalls that health education in schools should be provided at all stages of school education and included in school curricula. In view of the lack

of information in the report, the Committee asks for precise and detailed information in the next one. It also wishes to be informed of the situation in every region, rural as well as urban.

Public information and awareness-raising

The report states that information campaigns on drug addiction are being prepared, particularly in the media. It also mentions a prevention of maternal and prenatal mortality campaign information in the next report.

The Committee underlines that, since Conclusions XIII-3 (p. 348), it has asked to receive information allowing it to assess whether health education programs and information campaigns on unhealthy life styles and on diseases responsible for high mortality rates cover the entire population. Given that the report provides no information allowing the Committee to establish that this is the case, it considers that the situation is not in conformity with the Charter.

Consultation and screening

Pregnant women, children and adolescents

The Committee asks for information as to whether counselling and screening form part of the programme to reduce maternal and infant mortality. The next report should provide information, including statistics, on their frequency and accessibility.

It also repeats its question on medical check-ups in schools and their frequency.

If the necessary information is not included in the next report there will be nothing to show that Turkey is in conformity with Article 11§2 of the Charter.

Rest of the population

The Committee notes¹ that counselling centres for AIDS sufferers have been set up in the provinces. In view of the lack of other

¹ European Commission, 2003 regular report on Turkey's progress towards accession, 5 November 2003 (in: <http://www.europa.eu>).

information in the report, the Committee asks for an up-to-date description of the situation in the next report, including facts and figures. This information must cover the entire population, in rural as well as urban areas.

Conclusion

The Committee considers 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 health education programmes and information campaigns on unhealthy life styles and on diseases responsible for high mortality rates cover the entire population.

Paragraph 3 – Prevention of diseases

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

Policies on the prevention of avoidable risks

Reduction of environmental risks

Air pollution – The Committee notes that responsibility in this field has been transferred from the Ministry of Health to the Ministry of Environment and Forestry by Act No. 4856 of 1 May 2003. The report confirms the existence of air pollution in some provinces. The Ministry of Environment and Forestry instructs local authorities to take the necessary steps when air pollution is induced by the heating system and buildings, industry and motor vehicles. In reply to the Committee's question (Addendum to Conclusions XV-2, p. 261), the report states that local governments must undertake necessary measures when the established limits have been exceeded. The Committee repeats its question on the pollutants monitored. It also wishes to receive specific examples of measures taken when the established limits have been exceeded and on the number of regions concerned.

The Committee points out that the internal procedure for the ratification of the Rio Convention was completed on 18 December 2003 with the passing of Act No. 4990.

Ionising radiation – The Committee takes notes of the regulations of 15 January 2000 on nuclear and radiological hazards as well as of the competences of the Atomic Energy Institution (TAEK) which are defined in the nuclear and radiological emergency action plan. It also takes note of the establishment of the Crisis management centre within the TAEK. The Committee asks the next report to contain updated information on the implementation of these measures.

Asbestos – The Committee points out that to comply with the Charter legislation must prohibit asbestos, or at least place adequate restrictions on its sale, use and manufacture, require the owners of residential and public buildings to check for the presence of asbestos and take any necessary steps to remove it, and place obligations on firms with regard to the removal of asbestos. To enable it to assess the situation, it asks for practical and up-to-date information on all these subjects in the next report.

Food safety

The Committee notes that the Ministry of Agriculture is responsible for monitoring in this field. It also notes that inspections of products have been carried out. Given the general nature of the information provided, Committee cannot assess the situation. It underlines that in order to be in conformity with the Charter, states must set national legal standards for food hygiene taking into account scientific data, and establish and maintain machinery for monitoring compliance with these standards throughout the food chain. They must also develop, implement and update systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases. The Committee therefore asks for practical and up-to-date information on all these subjects in the next report.

Measures to combat smoking, alcoholism and drug addiction

Other than stating that drug addiction is on the increase, the report contains no further information on this subject. The Committee notes, according to another source¹, that in November 2002, the Ministry of

¹ European Commission, 2003 regular report on Turkey's progress towards accession, 5 November 2003 (in : <http://www.europa.eu>).

Health handed over its tobacco and alcohol responsibilities to a newly established tobacco products and alcoholic beverages market regulation board. The Committee wishes to be informed of the new body's powers and operating procedure. It also asks for up-to-date information in the next report on legislation on smoking, alcoholism and drug addiction. To assess the effectiveness of such policies the Committee needs statistics on trends in tobacco, alcohol and drug consumption. It therefore asks for information in the next report, backed up by statistics, on the results obtained.

If the necessary information is not included in the next report there will be nothing to show that Turkey is in conformity with Article 11§3 of the Charter.

Prophylactic measures

Epidemiological monitoring

The Committee refers to its previous conclusion that the situation was in conformity with the Charter. It notes, according to another source¹, that a regulation on the notification of communicable diseases entered into force in January 2005. The Committee asks that the next report provide information on any epidemiological survey in progress.

Immunisation

The Committee refers to its previous conclusion (Addendum to Conclusions XV-2, pp. 264-265) for a detailed description of the situation, which it considered not to be in conformity with the Charter because of inadequate immunisation coverage for several diseases.

According to the report, poliomyelitis has been totally eradicated. In addition, a measles elimination programme was launched in 2002 in which around 10 million pupils have been vaccinated. Hepatitis B has also been integrated into the national vaccination programme.

¹ European Commission, 2004 regular report on Turkey's progress towards accession, 6 October 2004 (in : <http://www.europa.eu>).

However, there is nothing in the report to show that the situation regarding other illnesses has improved. It therefore considers that the situation is not in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that immunisation coverage for several diseases is adequate.

Article 14 – Right to benefit from social welfare services

Paragraph 1 – Provision or promotion of social welfare services

The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services should concern all those in need, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- *The general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;*
- *An individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;*
- *The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies must be available for those who wish to complain about social welfare services and there must be a right to appeal to an independent body where allegations of discrimination and violation of human dignity are made;*
- *Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;*
- *The geographical distribution of these services shall be sufficiently wide;*
- *Recourse to these services must not interfere with people's right to privacy, including protection of personal data.*

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- *staff shall be qualified and in sufficient numbers;*
- *decision-making shall be as close to users as possible;*
- *there must be mechanisms for supervising the adequacy of services, public as well as private.*

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

Organisation of the social services

According to the report, on the basis of the legislation in force, social services are provided by the state (the General Directorate for Social

Services and protection of Children Institution – SHCEK, the General Directorate for Foundations and the Department for persons with disabilities), by local authorities at departmental, district and municipal level, and by non-state providers, such as foundations (the Social Collaboration and Solidarity Fund – SYDFT) and associations (the Red Crescent).

The SHCEK provides social assistance to children, the elderly, persons with disabilities, and other individuals in risk-groups (see Addendum to Conclusions XV-2, p. 266 for the description of the services). The Department for persons with disabilities provides for a range of services to persons with disabilities, in co-operation with other national bodies like the employment services. Municipalities are in charge of establishing care institutions for children without parental care, the elderly, and persons in need. The SYDFT, through its local foundations, helps persons in need by providing various allowances (heating, education, health), medical care, and food. Finally, the *Red Crescent*, also helps those in need through medical care, childcare and elderly care institutions, scholarships, and psycho-social centres.

Social services are financed by the state budget when they are provided by SHCEK and other state providers. Services offered by the local foundations of SYDFT are financed by various sources including state budget, tax revenues and from fines for street offences, etc.

The Committee observes on the basis of the information at its disposal that there is no general social services system in place in Turkey, but that services are offered by various bodies which appears to the Committee not to be co-ordinated. Moreover, the services mainly target individuals who are in economic need, while Article 14§1 extends to all those who are not able to cope because of social difficulties.

Effective, equal access and quality of services

According to the report, access to social services provided by the state, as well as from the SYDFT foundations and associations, is regulated by the individual need for financial assistance. Family income is the criterion used by SHCEK to allocate social services to children and their families. Similarly, income is the criterion for receipt of services under the Act No. 3294 on the Social Collaboration and

Solidarity Fund (SYDFT), whose aim is the redistribution of resources to persons in need. The Red Crescent association uses the poverty certificate as the criterion to regulate access to its services. The report indicates that applicants have the right to appeal to tribunal against the decisions of the administration. However, there is no right of appeal against the decisions taken by the local foundations of the SYDFT or by associations.

The Committee recalls that it examines the role of social services to prevent, to remove, or to alleviate personal or family want under Article 13§3. Article 14§1 concerns everybody lacking the ability to cope, in particular vulnerable groups and individuals who have a social problem. Therefore, its scope covers not only people who lack financial resources, but a broader group (see also Conclusions I, p. 69 and XIII-3, p. 372). The report provides information about social services provided mainly for people who are in a situation of financial need. The Committee observes that for the last three cycles of supervision it has asked the Turkish authorities to provide the information pertinent to Article 14§1. Accordingly, it asks again the next report to indicate the social services provided to everyone lacking resources, other than financial, to cope. It also asks the Turkish authorities to provide information about equal and effective access to social services and their quality in the light of the interpretation of Article 14§1 mentioned above and to indicate if equal treatment is guaranteed to nationals of other Contracting Parties to the 1961 Charter and to nationals of parties to the Revised Charter. In the meanwhile, the Committee considers that, in spite of the repeated request for relevant information, the Turkish Government has not demonstrated its conformity with the Charter.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 14§1 of the Charter on the ground of a repeated lack of information.

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

Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the clients as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user-groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

The Committee notes the information provided in Turkey's report. It observes that the report describes the activities carried out by the local foundations of the SYDFT and the Red Crescent, which is a voluntary association, and information as to how they are financed (see the conclusion under Article 14§1). However, it does not provide any new information about how the provision of social services by non-state providers is encouraged and regulated.

The Committee therefore asks that the next report contain information on the procedure that non-state providers must undergo and the conditions they must fulfil to become service providers and how their action is monitored. It also asks the next report to indicate how effective and equal access to social services provided by non-state providers is guaranteed in accordance with the above interpretation of Article 14§2. Finally, it asks information about the involvement of civil society in the elaboration of social services policy.

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

Article 17 – Right of mothers and children to social and economic protection

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

Establishment of parentage and adoption

The Committee notes that the new Civil Code which came into force in January 2002, stipulates that filiation between the married or unmarried mother and the child is established by birth. The bond of filiation between the father and the child is established by the marriage with the mother, by recognition or by a decision of a judge. The Committee notes that “a child who has a bond of filiation with another man cannot be recognised as long as this bond has not been declared invalid”. The Committee asks that the next report explain in more detail what is meant by this. It asks also whether the same rules apply with regard to adopted children.

According to the Civil Code there is no difference in the inheritance rights of children born within or outside of wedlock, provided that the filiation of the child with the father has been recognised or decided by a judge. Furthermore, adopted children have the same inheritance rights *vis-à-vis* the parents as other children.

Protection of children against ill treatment and abuse

The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.

The Turkish Penal and Civil Codes have provisions for the protection of children from physical and mental abuse, exploitation and other similar treatment by their parents.

The Committee notes that according to Article 6 of Law 4357 (13) and Articles 20 and 22 of Law 1702 (14), a teacher who commits a harmful act against a pupil may be sanctioned by *inter alia* the non payment of

his/her salary and pursuant to Article 27 of the latter law, a teacher who commits sexual harassment against a pupil is sanctioned by dismissal. From another source¹ the Committee notes that corporal punishment is used in schools and other institutions. Since the report is unclear on which legislation actually prohibits all forms of corporal punishment in schools and in institutions, the Committee asks that the next report contain this information. It asks also what measures have been taken to effectively enforce a ban on corporal punishment in schools and other institutions. This situation is not in conformity with Article 17 of the Charter.

The Committee notes that the Social Services and Child Protection Agency are *inter alia* responsible for the protection of ill treated children or children at risk of such treatment. It notes that the services for the protection of children from ill-treatment concern primarily support of victims of violence and abuse. The Committee asks that the next report provide information on services aimed at the effective prevention of abuse and violence of children. In particular, it asks what measures are being taken to prevent the rise in the number of children taken under care because of physical, mental and sexual abuse.

Children in public care

The report states that the Social Services and Child Protection Agency is responsible for the protection of children in need and street children. Children can be placed in homes or in foster families. Children may be placed together with their mothers in homes for women. According to the report there are 86 homes which currently offer services to 9264 children from the ages of 0 to 12 years and 107 training institutions which house 9962 children. Youth centres provide counselling, training, rehabilitation services and in certain cases temporary shelter to the increasing number of street children. These children have little to no possibility of being placed in families. The Committee asks that the next report indicate any improvements made to ensure the full development of children living in the streets, the rehabilitation of abused children, and services for reconciliation with their families.

¹Concluding Observations of the UN Committee on the Rights of the Child on Turkey, CRC/C/15/Add.152, 9 July 2001, in www.unhchr.org.

The Committee repeats its request for information on the total number of children in public care, the proportion of these placed with a foster family and the number placed in an institution. It also wishes to receive the number of children living in streets and the number provided with care from centres. Lastly, the Committee asks information on the types of and conditions in placements in *inter alia* factories, agricultural enterprises or in hospitals as mentioned in Article 10 of the Law No. 2253 on the Establishment, Duties and Procedures of Juvenile Courts (hereafter Juvenile Courts Law).

The Committee notes the various decrees and programmes provide guidelines on conditions and the services in the homes and centres and the development of the children. The Committee repeats its request for information as to whether there is any body responsible for monitoring care in institutions, and whether there is any specific procedure for complaining about the care and treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him.

The Committee recalls that children placed in institutions should be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall be of such size as to resemble the home environment and should not care for more than 10 children. The Committee asks the next report to provide details on the size of each unit in child care institutions.

The Committee asks that the next report explain the role, legal and otherwise, of a guardian or other care taker in an institution with regard to the care of children.

Young offenders

The Committee asks whether the new Civil Code permits minors to marry, under exceptional circumstances, at the age of 14 for girls and 15 for boys. It asks also how many minors marry at such low ages.

The report states that the minimum legal age of criminal responsibility is 12 years. The Committee notes however that Law No. 2253 on the Establishment, Duties and Procedures of Juvenile Courts (hereafter Juvenile Courts Law) stipulates that young offenders between 11 and 14 years shall be tried in juvenile tribunals. Children between 15 and 18 are subject to the Penal Procedure Law. The Committee further notes that minors between 11 and 14 years may not be subject to the Juvenile Courts Law if they are accused of having committed a crime falling under the jurisdiction of State security courts or military courts or if they live in areas under a state of emergency. The Committee asks detailed information in the next report on the functioning of this in practice.

The Committee considers the age of criminal responsibility to be manifestly too low and concludes that this is not in conformity with Article 17 of the Charter.

The Committee notes that the Juvenile Courts Law holds that no investigation can be conducted nor sentence given to minors who at the time of the crime being committed were under 11 years. However, if the crime requires a sentence of more than one year, one of the measures specified in Article 10 is applied. The measures applicable are *inter alia* placement in an institution for children with learning difficulties, in factories, in agricultural enterprises or in a public or private hospital. These measures can also be applied to minors whose physical, moral or spiritual development is in danger or children who seriously disobey their parents. The Committee asks more details on the placement procedure. It asks whether there is an age limit for the measures to be applied and the number of minors under 11 years of age subject to these measures. Lastly, the Committee asks that the next report provide more details as to the regime of the placements.

The Committee notes that no change to the situation concerning the minimum length of certain prison sentences, which it previously found excessive. The Committee finds that a minimum sentence of not less than 15 years for young offenders aged between 11 and 15 years and 20 years for young offenders aged between 16 and 18 years, who have committed a crime punishable by death is not in accordance with the principle that the imprisonment of minors should be for the shortest appropriate period of time and therefore concludes that the situation is not in conformity with Article 17 of the Charter.

The Committee notes that young offenders are detained, if arrested, in parts of adult prisons and in the two closed detention homes reserved for juveniles and guarded by the *gendarmarie*. Children in the 12-18 year age group, sentenced to imprisonment, are sent to one of the three Child Correction Houses.

The Committee repeats its requests for information on pre-trial detention. It asks how many minors are subject to pre-trial detention, the duration thereof and for what types of offences. It asks confirmation that young offenders when detained in adults prisons are detained separately from adults. From another source¹, the Committee notes that the length of pre-trial detention is long and that conditions of imprisonment are poor. It asks that the next report provide detailed information on measures taken to address these issues.

The Committee notes that if a child commits a crime with an adult, the trial of the minor can be delayed and asks where the minor concerned is placed and under what circumstances.

The Committee requests that the next report provide up-dated information on the number of young offenders sentenced to imprisonment or given alternative measures, and for what crimes. It asks detailed information on the conditions concerning release on parole. The Committee notes the information on possibilities for education but asks how this is applied in practice.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 17 of the Charter on the grounds that:

- corporal punishment in the home is not prohibited;
- the age of criminal responsibility is manifestly too low;
- the minimum length of certain prison sentences for minors is excessive.

¹ *Ibid.*

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion by Mr Lucien FRANÇOIS is appended to these conclusions.

Article 18 – Right to engage in a gainful occupation in the territory of other Contracting Parties

Paragraph 1 – Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movement

The Committee notes that, according to the latest data available¹, in the year 2000 approximately 270,000 people entered Turkey, one-third of them illegally. Among this total, 168,000 foreigners were granted a residence permit for a duration of at least one month. A total of 61,000 permits were given to people from Bulgaria, 11,000 to Azerbaijanis, 7,000 to Greeks and 7,000 to immigrants from the Russian Federation. By August 31, 2001 the number of residence permits granted was 173,100, a significant increase compared to the year before.

Work permits

The Committee recalls that under the terms of Act No. 5683 on the residence and movement of foreigners in Turkey, work permits were issued for specific jobs for periods not less than six months and no longer than two years. It notes that a new Act, Act No. 4817 of 6 March 2003 regarding work permits for foreign workers in Turkey entered into force on 6 September 2003, i.e. outside the reference period, which regulates the conditions of residence and employment of foreigners in Turkey. According to the report, the new law does not impose any restrictions on the freedom to exercise a gainful occupation by citizens of Contracting Parties to the European Social Charter or Parties to the Revised European Social Charter and facilitates the granting of work permits.

¹ *Trends in International Migration*, SOPEMI, 2002 edition

The reports states that since entry into force of the new Act No. 4817 on 6 September 2003 and until 12 February 2004, the number of applications for the work permits was 3,500 of which 1,300 were granted and while decisions on the rest were pending. The Committee notes that this information relates to data outside the reference period and therefore cannot be taken into account hereunder and wishes the next report to provide further information on the number of work permits granted under the new legislation to nationals of Contracting Parties to the European Social Charter or Parties to the Revised European Social Charter.

Relevant statistics

The total number of residence permits granted to foreign workers by the Ministry of the Interior slightly decreased during the reference period from 24,198 in 2000 to 22,556 in 2002. As far as the number of residence permits granted during the reference period to workers who are nationals of Contracting Parties to the European Social Charter or Parties to the Revised European Social Charter is concerned there has been a slight decrease in the case of, *inter alia*, nationals of the UK, France, Sweden and Poland. Since the report does not provide information on the number of applications for permits submitted, it is not clear from the report whether the decrease in the granting of residence permits corresponds to a decrease in applications submitted. The number of permits granted has increased since 2000, *inter alia*, for nationals of Bulgaria (from 656 to 841), Spain (from 82 to 112), Croatia (from 24 to 39), Norway (from 32 to 41), Portugal (from 189 to 196). It has more than doubled for Slovakia (from 5 to 11) and a significant increase in the number of residence permits granted may be noted with respect to Greek migrant workers (303 in 2000, 791 in 2002).

The Committees notes that with respect to the reference period, the report only provides the number of permits granted and does not show the number of applications filed and rejected. The Committee asks to be provided with the relevant information for the next reference period.

In view of the figures and the migratory flows described above, the Committee holds that existing regulations are applied in a spirit of liberality in Turkey.

Conclusion

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

Paragraph 2 – Simplifying existing formalities and reducing dues and taxes

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

The Committee notes that the new Act No. 4817 regarding “work permits for foreigners in Turkey” entered into force on 6 September 2003, i.e. outside the reference period. According to the report, the application in practice of Act No. 4817 by the relevant Turkish institutions is still under review. The Committee therefore wishes to be informed in the next report how the new law is actually applied in practice and whether and to what extent it introduces simplifications with respect to the existing formalities for the granting of work and residence permits.

Administrative Formalities

Issuing of work permits

The Committee notes that a foreign national entering Turkey for the purpose of engaging in a gainful occupation needs a residence permit pursuant to Article 3 of the Law regarding the residence and movement of foreign nationals in Turkey under the conditions stipulated in the new Act No. 4817. The report only contains information regarding the situation under the new legislation and does not provide information on the situation during the reference period which the Committee therefore assumes to have remained unchanged since the last supervision cycle.

According to the new legislation there exist four different categories of work permits, namely work permits of limited duration, work permits of unlimited duration, work permits for independent activities and exceptional work permits in particular cases such as for spouses of Turkish nationals and their children etc. A foreign worker may submit

his application for a work permit from outside Turkey with the Turkish diplomatic or consular mission in the respective foreign country which will forward the application to the responsible Ministry of Labour and Social Security or he may apply directly to the Ministry of Labour and Social Security if he is already legally residing on Turkish territory.

The new legislation requires the application for a work permit to comprise at least the corresponding request to the Ministry of Labour and Social Security, the application form signed by the foreign worker and the employer, the original of the employment contract, certified copies of the passport and qualifications, the valid residence permit and the foreign worker's curriculum vitae. Further documents are to be provided, *inter alia*, by foreign workers to be employed in tourism or in other specialised sectors of economy, by workers intending to engage in a self-employed activity or by institutions or enterprises wishing to employ foreign workers.

Pursuant to Act No. 4817, the employer has to notify the employment of a foreign worker to the Ministry of Labour and Social Security within 15 days. A self-employed worker has to inform the Ministry of the beginning or end of his activity within the same delay.

Renewal requirements

The Committee recalls that there was no simplified procedure for the renewal of work permits in Turkey and that the same administrative formalities had to be completed as for the initial permit. The report states in this respect that a foreign worker may apply for the renewal of his work permit to the Ministry of Labour and Social Security by submitting the corresponding application form, his last salary statement, a certified copy of his passport and a statement by the responsible tax authorities on his tax situation. It is not clear from the report whether this procedure already applied during the reference period or has been introduced by the new legislation.

Work and residence permits

The Committee recalls that it found the situation in Turkey not to be in conformity with the Charter in the last supervision cycle, because of the continuing existence of the dual application procedure for residence and work permits. The report contains no indication that this procedure changed during the reference period. It notes from the

report that the new Act No. 4817 still provides for a dual application procedure with respect to the granting of work and residence permits. Whereas applications for the granting of work permits have to be submitted to the Ministry of Labour and Social Security, applications for the granting of a residence permit have to be filed with the Ministry of the Interior. The Committee wishes the next report to specify whether the procedures are interrelated or whether any simplifications have been introduced in this respect.

Time necessary for obtaining work permits

In reply to the Committee's question, the report states that an application for a work permit by a foreign worker has to be dealt with and answered within a maximum of 90 days by the Ministry of Labour and Social Security. It is not clear whether this delay has been introduced by the new law or whether it will be modified by it. The Committee wishes the next report to clarify this point and to specify what the corresponding time limit is for the granting of permits for self-employment.

Chancery Dues and other charges

The report only provides information on the charges to be paid for the granting of work permits for the year 2004 as determined by Act No. 4817. The Committee notes that the fees have increased considerably since 1999. The Committee would like to receive clarification on the reasons for this increase in the next report and asks whether a reduction or abolition of fees is envisaged. It notes from the report that under the new legislation the Ministry of Foreign Affairs is authorised to adapt the fees charged.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the ground that during the reference period the existing complex formalities for the granting of residence and work permits have not been simplified.

Paragraph 3 – Liberalising regulations

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

The Committee acknowledges that the new Act No. 4817 regarding “work permits for foreigners in Turkey” which entered into force on 6 September 2003, i.e. outside the reference period, liberalises the existing regulations governing the employment of foreign workers to a certain extent. The Committee wishes to receive information in the next report on how the new law is implemented in practice.

Access to the national labour market and exercise of right to employment

The Committee recalls that under the Turkish regulations on the employment of foreign nationals, work permits were issued for specific jobs for given employers, a situation which the Committee has held not to be in conformity with the Charter in previous supervision cycles. The report provides no indication that the situation has changed during the reference period. However, according to the new legislation a foreign worker having a work permit may change his workplace and professional activity subject to the authorisation by the Ministry of Labour and Social Security.

The Committee recalls that, under Article 18§3 of the Charter, foreign nationals should be able to gain access to a wider range of jobs after having worked in a country for a certain period, which should not be unreasonably long. The Committee notes that under the new law, an initial work permit may be granted for a period of one year and may subsequently be extended for three or even six years under certain conditions. It wishes the next report to provide details on these conditions.

According to the new Act No. 4817 the spouse and the dependent children of the foreign worker may be granted a work permit even in the event they did not enter the territory together with the foreign worker. A residence permit of unlimited duration may be granted to a foreign worker who has worked for at least six consecutive years in Turkey or has had his residence there for at least eight consecutive years. The new law also provides for exceptional work permits to be

granted to certain categories of foreigners irrespective of the duration of previous employment relationships or residence such as, *inter alia*, to spouses of Turkish nationals and their children, foreigners born in Turkey or foreigners having entered Turkey as minors and having completed their education in Turkey or nationals of member states of the European Union.

The Committee further found in its last conclusion on Article 18§3 that many jobs were reserved for Turkish citizens and asked for the reasons justifying the exclusion of non-nationals in these cases. No such information is provided in the report. The Committee indicates that this issue be assessed under Article 1§2 of the Charter which prohibits discrimination in employment. It therefore asks the Government to submit all relevant data in its next report under that provision.

Consequences of a job loss

The Committee reiterates its question as to whether foreign workers whose residence permits expire after they have lost their jobs have the possibility to be granted an extension of their residence permit in order to give them sufficient time to find new employment. It also reiterates its question as to whether residence permits are extended pending appeals against dismissals lodged by foreign workers.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the ground that during the reference period access to the national labour market was not liberalised for foreign workers.

Paragraph 4 – Right of nationals to leave the country

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

Pursuant to Section 22 of the Passport Act No. 5682 nationals may be prohibited from leaving the country in three cases: by judicial decision, by tax offices in the event of unpaid tax debts and by the Ministry of Interior on security grounds. In its last conclusion the Committee

asked for clarification of the term “security grounds”. The report states in this respect that a prohibition from leaving the country is in principle only possible if the person concerned is endangering public health or security.

The Committee considers that, *prima facie*, the abovementioned restrictions are among those authorised by Article 31 of the Charter. However, it wishes to know what are the exact procedures applying to these restrictions and whether the person whose freedom of movement is restricted has legal remedies to challenge the decisions in question.

The Committee notes from the report that restrictions to leave the country also apply to persons who refuse to perform their military service. It wishes the next report to explain the application of these restrictions in practice.

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

Dissenting opinion of Mr L FRANÇOIS

Conclusion relating to Article 17§1

In concluding that the situation is not in conformity with the Charter on the ground that corporal punishment of children within the family is not prohibited, and in failing to distinguish between on the one hand acts which could truly endanger the physical integrity, dignity, and psychological development of a child and, on the other hand acts as innocent as a light slap on the hand or a smack on the bottom administered by parents, in the child's interests, to a young child who will not listen to reason and persists with dangerous behaviour, the Committee's interpretation of Article 17 seems to me too extensive because the law must only condemn acts that are harmful to society and there is no scientific proof that such acts I have just mentioned are harmful, or indeed useless as a means of upbringing and socialisation of a child.