

— Turkey and the European Social Charter —

Ratifications

Turkey ratified the revised European Social Charter on 27/06/2007 and has accepted 91 of the revised Charter's 98 paragraphs (it had previously ratified the 1961 Charter on 24/11/1989).

It has not signed the Additional Protocol of 1995 providing for a system of collective complaints.

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1	
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3	
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22	
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1	
31.2	31.3								Grey = Accepted provisions			

The Charter in domestic law

Automatic incorporation into domestic law and superiority of International treaties on fundamental rights and freedoms over national legislation (Article 90§5 of the Constitution).

Reports *

Between 1989 and 2009, Turkey submitted 15 reports on the application of the Charter and the Revised Charter. The [15th report on the Charter](#) and [1st report on the Revised Charter](#) on the accepted provisions of Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23 and 30) were submitted on 25/03/2009.

The next report will concern the accepted provisions relating to Thematic Group 3 "Labour rights", i.e.

- . The right to just conditions of work (Article 2)
- . The right to a fair remuneration (Article 4)
- . 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 procedure (Article 29)

It is due by 31/10/2009.

* [Under the new reporting system in effect since 31 October 2007](#), by decision of the Committee of Ministers, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States are to present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter will be reported on once every four years.

Situation of Turkey with respect to the application of the Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights ¹

Children

- ▶ Legislation aiming at increasing the availability of childcare (Law No. 5212).
- ▶ Legislation against domestic violence (Law No. 4320/1998).
- ▶ 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.
- ▶ In 1997, compulsory education was extended to eight years.
- ▶ The new Labour Code, which entered into force in 2003, states that employment of children over the age of 14 in light work is permitted on the condition that they have completed compulsory education.

Employment

- ▶ Act No. 4817 regarding work permits for foreigners in Turkey which entered into force on 6 September 2003 provides that 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.
- ▶ Since the repeal of Article 3/II A of the Act No. 506 on Social Insurance, non-nationals who have a working permit in Turkey are automatically insured for long-term risks, including unemployment. Application is no longer conditioned by the existence of bilateral or multilateral agreements.
- ▶ On 3 January 2005 the fee that employers had to pay for notification of vacancies to the employment services was scrapped.

Social protection

- ▶ Introduction of a system of unemployment benefits (Act reforming certain aspects of the social security system, entered into force on 8 September 1999).

Non-discrimination

- ▶ General legislation (Labour Act No. 4857) against discrimination in employment (extension of the concept, possibility of reinstatement and of compensation proportional to the damage suffered etc.).

Non-discrimination (Nationality)

- ▶ The monthly poverty benefit (muhtaçlık aylığı) has been available regardless of nationality since 17 January 1997.
- ▶ Section 3-II/A of Social Insurance Act No. 506 of 1964 which excluded the affiliation of foreigners in respect of long-term risks has been repealed.

Non-discrimination (Sex)

- ▶ A new civil code, ensuring equality between spouses and between parents entered into force on 1 January 2002.

¹ The European Committee of Social Rights rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the Committee).

Non-discrimination (Disability)

► On the basis of Decree No. 573/97 persons with disabilities are permitted access to special and higher education.

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► Article 1§2 – right to work (freely undertaken work – prohibition of discrimination, prohibition of forced labour, other aspects)

1. Certain categories of employment are limited to Turkish nationals.
2. Compensation for discrimination in employment is limited to four months wage.
3. Section 1467 of the Code of Commerce permits a ship's captain to use force in order to bring sailors back on board to look after the ship and in order to maintain discipline.
4. Certain provisions of the Martial Law No. 1402/1971 as amended by Act No. 4045/1994 and Act No. 2935/1983 permit restrictions on employment which go beyond those permitted by Article 31 of the Charter.

([Conclusions XIX-1](#))

► Articles 1§4 and 9 – right to work (vocational guidance, training and rehabilitation) and right to vocational guidance

It has not been established that the right to vocational training in the education system is guaranteed.

([Conclusions XIX-1](#))

► Article 18§2 – right to engage in a gainful occupation in the territory of other Parties (simplifying formalities and reducing dues and taxes)

There is a dual application procedure for work and residence permits.

([Conclusion XIX-1](#))

► Article 18§3 – right to engage in a gainful occupation in the territory of other Parties (liberalising regulations)

Regulations governing access to the national labour market and the exercise of the right to employment are too restrictive.

([Conclusion XIX-1](#))

Thematic Group 2 "Health, social security and social protection"

► Article 11§1 – right to protection of health (removal of the causes of ill-health)

The rate of infant mortality is manifestly too high; the manifestly inadequate budget for health care and the inadequacy of health care facilities and staff mean that the public is not guaranteed access to health care nationwide.²

([Conclusions XVII-2](#))

► Article 11§3 – right to protection of health (prevention of diseases)

The immunisation rates are inadequate in the case of several diseases.

([Conclusions XVII-2](#))

► Article 12§1 – right to social security (existence of a social security system)

1. None of the social security schemes cover all branches.
2. The existing social security schemes do not cover a significant percentage of the population.

² RecChS(98)4 adopted by the Committee of Ministers on 4 February 1998.

3. There is a high percentage of working people who are not covered by any social security.
([Conclusions XVIII-1](#))

▶ Article 13§1 – right to social and medical assistance (adequate assistance for every person in need)

The individual right to social and medical assistance does not exist.

([Conclusions XVIII-1](#))

▶ Article 13§3 – right to social and medical assistance (prevention, abolition or alleviation of need)

The provision of social services is manifestly inadequate.

([Conclusions XVIII-1](#))

▶ Article 14§1 – right to social welfare services (provision or promotion of social welfare services)

It has not been established that the right to welfare services was guaranteed.

([Conclusions XVII-2](#))

Thematic Group 3 "Labour rights"

▶ Article 4§3 – right to a fair remuneration (equal pay)

1. In several sectors of the economy, the principle of equal pay does not apply;

2. Family benefits and child allowances are paid to the husband where both spouses are public servants, or the wife with the husband's consent, and not according to other criteria unconnected with the sex of the spouse.

([Conclusions XVIII-2](#))

▶ Article 4§5 – right to a fair remuneration (limitation of deduction from wages)

Not all workers are protected against deductions from wages that could deprive them of the minimum subsistence level.

([Conclusions XVIII-2](#))

Thematic Group 4 "Children, families, migrants"

▶ Article 7§3 – right of children and young persons to protection (full benefit of compulsory education)

Children who are still subject to compulsory education may be employed in certain sectors of the economy.³

([Conclusions XVII-2](#))

▶ Article 7§4 – right of children and young persons to protection (working time)

Section 61 of the Labour Act fixes an excessive 45-hour working week limit for young people under the age of 16.

([Conclusions XVII-2](#))

▶ Article 7§5 – right of children and young persons to protection (fair pay)

It has not been established that apprentices are entitled to a fair allowance throughout their apprenticeship.

([Conclusion XVII-2](#))

³ RecChS(97)2 adopted by the Committee of Ministers on 15 January 1997.

- ▶ Article 7§6 – right of children and young persons to protection (time spent on vocational training)

It has not been established that time spent by young workers on vocational training is considered as working time.

[\(Conclusions XVII-2\)](#)

- ▶ Article 7§8 – right of children and young persons to protection (prohibition of night work)

Only night work in industrial undertakings is prohibited in the case of workers under the age of 18.

[\(Conclusions XVII-2\)](#)

- ▶ Article 7§9 – right of children and young persons to protection (working conditions between the age of 15 and 18 – regular medical examination)

Provisions of the Labour Act concerning compulsory regular examinations of young workers do not cover all sectors of economy (the agricultural sector, in particular, is excluded).

[\(Conclusions XVII-2\)](#)

- ▶ Article 16 – right of the family to social, legal and economic protection

There is no general system of family benefits.

[\(Conclusions XVIII-1\)](#)

- ▶ Article 17 – right of children to social and economic protection

1. Corporal punishment in the home is not prohibited;
2. The age of criminal responsibility is manifestly too low;
3. The minimum length of certain prison sentences for young minors is excessive.

[\(Conclusions XVII-2\)](#)

- ▶ Article 19§§4 and 10 – right of migrant workers and their families to protection and assistance (equal treatment in trade union and employment matters)

Foreign nationals, including nationals of States Parties, cannot become founder members of a trade union. Legislation does not sufficiently protect the rights of migrant workers in equal treatment or employment matters. This also applies to self-employed workers.

[\(Conclusions XVIII-1\)](#)

- ▶ Article 19§6 – right of migrant workers and their families to protection and assistance (family reunion)

Migrant workers' children between the ages of 18 and 21 do not enjoy the right to family reunion.

[\(Conclusions XVIII-1\)](#)

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Turkish Government to provide more information in the next report:

Thematic Group 1 "Employment, training and equal opportunities"
(Report to be submitted before 31 October 2011)

- ▶ Article 1§1 Conclusions XIX-1

Thematic Group 2 "Health, social security and social protection"

(Report under examination by the European Committee of Social Rights – Conclusions to be published by the end of 2009)

- ▶ Article 11§1 Conclusions XVII-2
- ▶ Article 14§2 Conclusions XVII-2

Thematic Group 4 "Children, families, migrants"

(Report to be submitted before 31 October 2010)

- ▶ Article 19§1 Conclusions XVIII-1
- ▶ Article 19§8 Conclusions XVIII-1