

RESPONSE TO TURKEY'S 12TH NATIONAL REPORT ON THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER

Turkey ratified the European Social Charter in 1989 and since 2007, it is a contracting party to the Revised European Social Charter which extends the scope of the Parties' obligations. On July 7, 2020, the 12th National Report¹ on the Implementation of the European Social Charter (Revised)² was submitted by the Government of the Republic of Turkey.³

This paper presents the examination of the National Report from, especially perspective of human rights and fundamental freedoms. Evaluations in this paper are made in consideration of Turkey's explanations for each related provision of the Charter.

ARTICLE 1 - THE RIGHT TO WORK

1. Regarding the right to work, the Report attributes to the National Employment Strategy (2014-2023) by addressing the aim of increasing the contribution of growth to employment in the medium and long term.⁴

2. The Preamble of the Charter highlights the maintenance and further realization of human rights and fundamental freedoms, and Article 1 emphasizes the obligation of the Parties with regards to ensuring the effective exercise of the right to work.

¹ Hereinafter, it is called "Report".

² Hereinafter, it is called "Charter".

³ For whole text of the National Report, see at https://www.ecoi.net/en/file/local/2032949/RAP_Cha_TUR_12_2020.pdf.pdf

⁴ Id, page 4.

3. The period of the National Employment Strategy (2014-2023) coincides with the period which started from the coup attempt of July 2016 in Turkey, carried on into the state of emergency and its routine extensions, and have continued so far.

4. During this period, extensive human rights violations have occurred against hundreds of thousands of people – from arbitrary deprivation of the right to work and to arbitrary detentions and arrests, to torture and other ill-treatment, and other large-scale serious violations of human rights and freedoms.⁵

5. Since the 2016 coup attempt, more than 130,000 people including judges, academics, teachers, journalists, police and military officers, and other public servants have been arbitrarily dismissed from their jobs for their alleged ties to the Gülen movement designated by the Erdogan regime as the “Fethullah Terrorist Organization” (“FETÖ”)⁶. Twenty-two emergency decrees were promulgated by the end of 2017 and the decrees attribute to ‘link or connection’ with ‘terrorist organizations’ without describing the nature of such links, giving large discretion of interpretation to the authorities.⁷

6. The Turkish government has continued arbitrary and systematic dismissals of public officers even after the state of emergency was lifted. For example, regarding the dismissals in the judiciary, on December 3, 2020, a total of 13 judges and prosecutors, and on January 23, 2021, a total of 9 judges and prosecutors were dismissed by the Council of Judges and Prosecutors (HSK).⁸

7. Responding to domestic and international pressure, the Turkish government established a special state of emergency commission to review the dismissal decisions. Due to the lack of institutional independence, lengthy

⁵ For relevant Reports and News about the extensive violations of human rights and freedoms, see Freedom House, at <https://freedomhouse.org/country/turkey> and Amnesty International, at <https://www.amnesty.org/en/search/?q=turkey>.

⁶ U.S. Department of State, “2019 Country Reports on Human Rights Practices: Turkey”, at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>

⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22853&LangID=E>

⁸ Anadolu Ajansı, [in Turkish], *HSK'nin 13 hakim ve savcıyı meslekten ihraç kararı Resmi Gazete'de* (The HSK's dismissal decision for 13 judges and prosecutors was released in the Official Gazette), 3 December 2020, at <https://www.aa.com.tr/tr/turkiye/hsknin-13-hakim-ve-savciyi-meslekten-ihrac-karari-resmi-gazetede/2063876>; Anadolu Ajansı, [in Turkish], *HSK'nin FETÖ ile iltisaklı 9 hakim ve savcıyı meslekten ihraç kararı Resmi Gazete'de* (The HSK's dismissal decision for 13 judges and prosecutors affiliated with the FETÖ was released in the Official Gazette), 23 January 2021, at <https://www.aa.com.tr/tr/turkiye/hsknin-feto-ile-iltisakli-9-hakim-ve-savciyi-meslekten-ihrac-karari-resmi-gazetede/2120152>

review procedures, and the absence of sufficiently individualized criteria, the Inquiry Commission has not been able to provide an effective remedy to the dismissals. Regarding the number of applications, as of March 2020, 126,300 applications had been brought before the Inquiry Commission and it reviewed 105,100. Only 11,200 of the applications had led to a reinstatement, while 93,600 complaints had been rejected.⁹ In the Turkey 2020 Report, the European Commission highlights this situation with the following evaluation: *“The State of Emergency Inquiry Commission mandated to examine dismissals of public servants, continued to have a very large backlog of unresolved cases for those affected by measures under the state of emergency. A public-school teacher, after being reinstated by the Commission, sued the state and was granted full compensation by a court for her financial losses after being dismissed under the state of emergency.”*¹⁰

8. The Report addresses the activities of the Turkish Employment Agency (ISKUR) by stating that *“job and vocational counselors carry out [...] tasks in order to ensure full and sustainable employment by referring to the appropriate vocation.”*¹¹ One of ISKUR’s tasks mentioned in the Report is to provide counseling services for job seekers. However, ISKUR has not carried on its activities in line with the principles of the rule of law and equality. Under the instruction (dated 1 August 2017 and numbered 28025) of the ISKUR, public servants who were dismissed with the emergency decrees are not accepted on vocational courses and employment projects.¹²

9. For example, a Turkish national, Nebi Toylak, a former public-school teacher dismissed from his job by the Turkish government in the aftermath of the coup attempt in July 2016, was not allowed to attend a vocational course organized by the Turkish Employment Agency (ISKUR). Mr. Toylak contacted

⁹ European Commission, *“Commission Staff Working Document-Turkey 2020 Report”*, at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

¹⁰ Id, page 91.

¹¹ Page of the Report, at

https://www.ecoi.net/en/file/local/2032949/RAP_Cha_TUR_12_2020.pdf.pdf

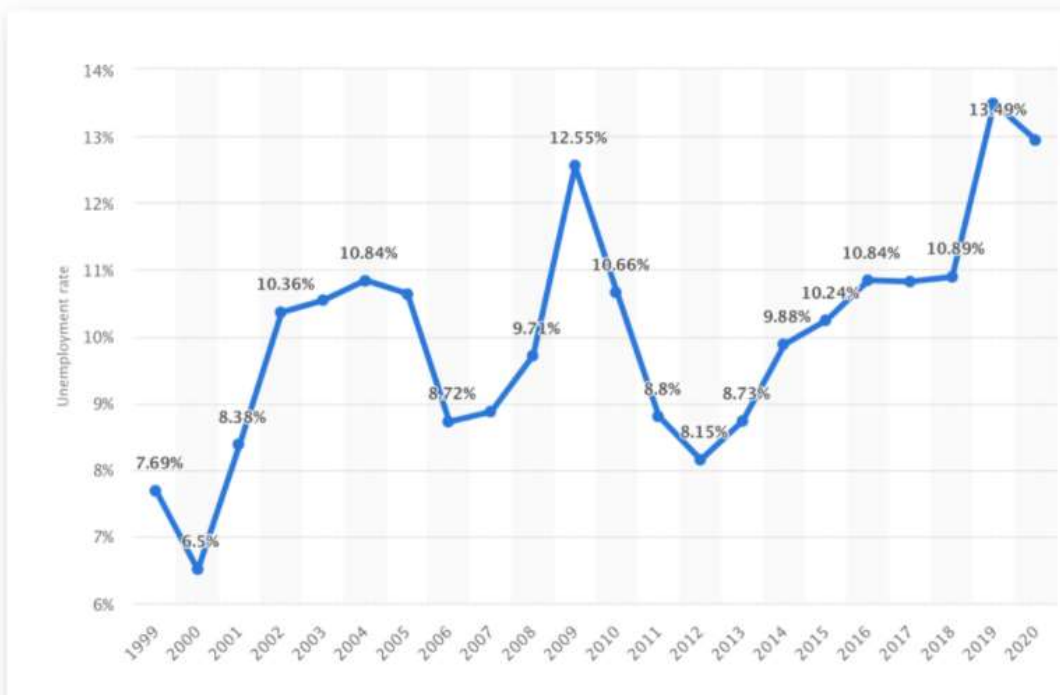
¹² Human Rights Defenders, Turkey: No Country for The Purge Victims!, page 5, at

<https://arrestedlawyers.files.wordpress.com/2020/01/no-country-for-the-purge-victims-1.pdf>

ISKUR to learn why he was prevented from attending the course, to which they replied, “Because you were dismissed with a government decree.”¹³

10. Under the explanation regarding Article 1, the Report also shows some statistics concerning employment and unemployment rates.¹⁴ Four graphics in the Report depict the statistic regarding people employed by the services of the Turkish Employment Agency (ISKUR) and employment and unemployment rates between 2104 and 2019. The Report does not explain the reasons for unemployment rates during the relevant period. In 2020, the proportion of poor households in Turkey rose %14.4 from %10.49. According to DISK-AR, 2.2 million employees lost their jobs.¹⁵ The graphics¹⁶ below reveal the high unemployment rates in Turkey:

Turkey: Unemployment rate from 1999 to 2020



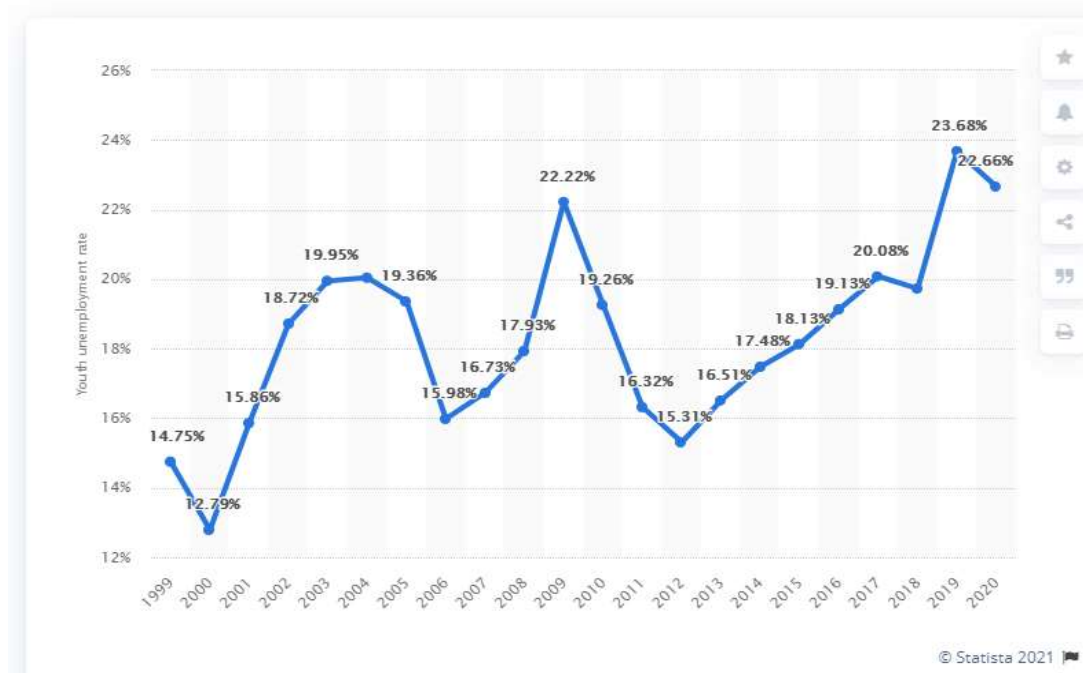
¹³ Stockholm Center for Freedom, dismissed civil servant barred by authorities from attending public course, November 19, 2020, at <https://stockholmcf.org/dismissed-civil-servant-barred-by-authorities-from-attending-public-course/>

¹⁴ Pages 8 and 9 of the Report.

¹⁵ Euronews[in Turkish], Türkiye'de işsizlik oranı: TÜİK'e göre yüzde 12.9, ILO'ya göre yüzde 28.8 (The unemployment rate in Turkey: according to the TUIK, it is 12.9 %, according to the ILO, it is 28.8%, at <https://tr.euronews.com/2021/02/11/turkiye-de-issizlik-oran-tuik-e-gore-yuzde-12-9-ilo-ya-gore-yuzde-28-8>

¹⁶ For the graphics see Assedel, at <https://assedel.org/category/opinion/>; Statista, at <https://www.statista.com/statistics/813118/youth-unemployment-rate-in-turkey/>

Turkey: Youth unemployment rate from 1999 to 2020



11. Under the explanation concerning the second Paragraph of Article 1 of the Charter, the Report refers to the provisions of the Turkish Constitution, Turkish Penal Code, and Turkish Labour Law with regards to freedom of work, violation of freedom of work, the principle of equal treatment to protect people from discrimination based on language, color, sex, disability, political thought, philosophical belief, religion.¹⁷ The report stresses the legal framework and practical measures in this context, however, the purged public servants have continued to face discrimination in employment since the coup attempt of July 2016.

12. In this sense, the massive dismissals in Turkey have resulted in 'social genocide'.¹⁸ Dismissed people arbitrarily are banned permanently from working in the public sector. They are also barred by the decree-laws from employment in the private sector. The dismissals have affected a wide range of dismissed people in terms of loss of the right to work, the right to an adequate standard of living, adequate housing, health, freedom of movement, and an effective

¹⁷ Page 9 and subs of the Report.

¹⁸ Stockholm Center for Freedom, "Turkey's 2016-2018 state of emergency a 'social genocide program'", 14 July 2020, at <https://stockholmcf.org/turkeys-2016-2018-state-of-emergency-a-social-genocide-program/>

remedy.¹⁹ Along with their families, dismissed public officials have also lost health care benefits related to their jobs.

13. During the relevant period subjected to the Report, the Turkish Ministry of Justice had been barring the dismissed judges and prosecutors, and law academics from being a lawyer.²⁰ However, according to the provisions of the Attorneyship Law No.1136, under the condition of having no criminal record, every Turkish citizen who has a bachelor's degree in law, has the right to be admitted to an internship to become a lawyer. Another important example is that the Turkish Ministry of the Environment and Urban Planning, with its decision, dated 16 April 2018 and numbered 67634, prohibited the dismissed civil servants from working as architects, engineers, laboratory workers, and technicians in building inspection companies.²¹

14. The Directorate of Private Educational Institutions for the Turkish Ministry of National Education prohibited the purged academics and teachers from working in private educational institutions. In this regard, the dismissed civil servants are not allowed to work as driving instructors. Likewise, the dismissed teachers and physiotherapists cannot work in private rehabilitation centers.²²

15. Those practices which are not in line with the international legislation explicitly reveal the discrimination based on political thought in employment in Turkey.

16. Under the title of *“Responses to the Further Information Requests of the European Committee of Social Rights”* of the Report, the establishment of the Human Rights and Equality Institution of Turkey (HREI) is addressed to prohibit discrimination in employment.²³ Relevant domestic legislation regarding the establishment and missions of the HREI was introduced, however serious human rights violations, such as deprivation of the right to work, discrimination,

¹⁹ See also OHCHR, *“Report on the impact of the state of emergency on human rights in Turkey”*, including an update on the South-East (January – December 2017), March 2018, paras 59-60. The report is available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22853&LangID=E>.

²⁰ Human Rights Defenders, Turkey: No Country for The Purge Victims!, page 3, at <https://arrestedlawyers.files.wordpress.com/2020/01/no-country-for-the-purge-victims-1.pdf>

²¹ Human Rights Defenders, Id, page 4.

²² Human Rights Defenders, Id, page 6.

²³ Page 12 and subs of the Report.

torture, ill-treatment, and abduction, have taken place in Turkey since the coup attempt of July 2016.

17. The European Commission's Turkey 2020 Report presents several issues related to the HREI. According to the Commission, *"The Human Rights and Equality Institution of Turkey (HREI), which should act as the national preventive mechanism, does not meet the key requirements under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) and is not yet effectively processing cases referred to it."*²⁴ The Report has also highlighted the following points: *"The HREI accepts only cases outside the remit of the Ombudsman. Neither of these institutions is **operationally, structurally, or financially independent, and their members are not accredited in compliance with the Paris Principles**. So far, the HREI has not applied for accreditation to the Global Alliance for National Human Rights Institutions. The speed and effectiveness of the institutions in dealing with applications cause particular concern in light of the high number of alleged violations in the aftermath of the attempted coup. Of 1,065 applications received by the HREI, 133 are under processing and investigation."*²⁵

18. In addition to those assessments, the Commission also reveals that *"Turkey has no strategy or action plan for non-discrimination in employment and social policy. Data on discrimination in employment, social policy, and social protection is not available. Discrimination on the grounds of sexual orientation and gender identity is not prohibited by law."*²⁶

19. In consideration of the review of the European Commission, the expectation to prevent discrimination from the HREI which has not carried out its independent structure would be so optimistic.

20. On the one hand, the Report claims that Turkey has ensured all responsibilities to protect people from discrimination in employment, on the other hand, Turkey's Presidential Decree published on 20 March 2021 announcing the withdrawal from the Council of Europe Convention on

²⁴ European Commission, "Commission Staff Working Document-Turkey 2020 Report", page 31, at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

²⁵ European Commission, Id, pages 29 and 30.

²⁶ European Commission, Id, page 92.

Preventing and Combating Violence Against Women and Domestic Violence, called “Istanbul Convention”.²⁷ Paragraph 3 of Article 4 of the Convention states that *“The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or another status.”*

21. Moreover, a “Human Rights Action Plan” was announced by the Turkish government on March 2, 2021. Several principles in the action plan are listed as though the Erdoğan regime has newly discovered them. Those principles are enshrined in many international instruments for years.²⁸ Although the arbitrary purge of thousands of people and the violation of their several rights are the main issues for especially five years, the action plan does not introduce any “plan” or “solution” about the reinstatement of dismissed people.

ARTICLE 9- THE RIGHT TO VOCATIONAL GUIDANCE

22. The Parties to the Charter should ensure to provide all their citizens with the right to vocational guidance in line with the principles of non-discrimination and equal treatment. Under this responsibility, one of the tasks is to provide counseling vocational training courses. As expressed above, purged civil servants are not allowed to attend vocational courses organized by the Turkish Employment Agency (İSKUR).²⁹

²⁷ Council of Europe, Turkey’s announced withdrawal from the Istanbul Convention endangers women’s rights, March 22, 2021, at <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>

²⁸ Duvar English, “A so-called human rights action plan for Turkey”, 5 March 2021, at <https://www.duvarenglish.com/a-so-called-human-rights-action-plan-for-turkey-article-56512>

²⁹ Stockholm Center for Freedom, dismissed civil servant barred by authorities from attending public course, November 19, 2020, at <https://stockholmcf.org/dismissed-civil-servant-barred-by-authorities-from-attending-public-course/>

23. Similarly, during the period subjected to the Report, the Turkish Ministry of Justice barred the dismissed academics, judges, and prosecutors, from starting an internship as a lawyer.³⁰

ARTICLE 15- THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION, AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

24. The Parties to the Charter undertake to take the necessary measures to provide persons with disabilities with guidance and education and to promote their full social integration and participation in the life of the community through measures.

25. 'Person with a disability is defined in the U.N. Convention on Rights of Persons with Disabilities (CRPD). According to Article 4 of the CRPD, persons with disability refer to persons who have various levels of physical, intellectual, mental, or sensory impairments which in interaction with attitudes and environmental conditions may hinder their full and effective participation in society on an equal basis with others.

26. The Report highlights the following: *“Ministry of National Education (MEB) which is responsible for providing equal education opportunities to all children also ensures that all children with disabilities use their right to education.”*³¹ As stated in the Report, the Turkish Penal Code specifies that discrimination on the ground of disability is subject to penal sanctions.³²

27. There have been numerous cases when government institutions have not provided social security benefits to purge victims and alleged members of the Gülen movement.

28. According to a news report³³, a young girl, Nurefşan Ketenci, with major disabilities was forced to leave a public special needs school in Turkey because

³⁰ Human Rights Defenders, Turkey: No Country for The Purge Victims!, page 3, at <https://arrestedlawyers.files.wordpress.com/2020/01/no-country-for-the-purge-victims-1.pdf>

³¹ Page 82 of the Report.

³² Article 122 of the Turkish Penal Code (Law No.5237).

³³ Stockholm Center for Freedom, *Special needs school forces disabled girl to leave due to father's links to Gülen movement*, December 3, 2020, at <https://stockholmcf.org/special-needs-school-forces-disabled-girl-to-leave-due-to-fathers-links-to-gulen-movement/>

her father had worked at a Gülen movement-affiliated institution that was shut down by the Turkish government. She was born with the cri-du-chat syndrome, also known as 5p minus syndrome. She is disabled and according to the doctors, her heart function is similar to that of a 94-year-old. Since the girl's school was not allowed to directly expel any student, according to Ketenci's mother, they were pressured into withdrawing her from the school by the administration.³⁴

29. In another case, financial assistance paid by the Turkish government to the family of Nurbanu Aydın, a 29-year-old “spastic quadriplegia cerebral palsy” patient, was cut off because her father was arrested on October 5, 2016, on charges of membership in “FETÖ”. He was later charged with “membership in a terrorist organization and convicted, sentenced to six years, eight months in prison.³⁵ After the financial assistance was cut off, the family was officially informed that they would no longer receive government payments.³⁶

30. In a similar case, a bedridden woman, Sevdegül Güler who had Dawson disease was a victim of the Erdoğan regime's witch-hunt. Sevdegül's parents, Ümmühan and Mehmet Güler were both public school teachers. They were dismissed from their jobs by emergency decrees in the aftermath of a July 15, 2016, coup attempt in Turkey.³⁷ According to the report³⁸, Sevdegül's father Mehmet was later arrested for “membership in a terrorist organization” due to his alleged ties to the Gülen movement. He has been in prison for the past three-and-a-half years. After her husband's arrest, Ümmühan Güler had to take care of her daughter alone. The Turkish government denied her a care allowance since she was also a purged public servant. She had to both work and take care of her three children, including Sevdegül.

31. The Turkish government claimed that *“they adopted a rights-based approach to disabilities and regarded the measures taken for persons with*

³⁴ Stockholm Center for Freedom, Id.

³⁵ Stockholm Center for Freedom, *Government assistance to disabled woman cut off after father's arrest*, June 23, 2020, at <https://stockholmcf.org/government-assistance-to-disabled-woman-cut-off-after-fathers-arrest/>

³⁶ Stockholm Center for Freedom, Id.

³⁷ <https://www.disability.asn.au/post/bedridden-woman-whose-mother-was-denied-care-allowance-with-g%C3%BClen-movement-dies>

³⁸ Id.

*disabilities as a human rights requirement*³⁹, however, the above-mentioned cases reveal the discrimination on the ground of political thought rather than a rights-based approach. The Erdoğan regime's witch-hunt to persecute supporters of the Gülen movement is an alarming example that has resulted in punishing vulnerable persons with disabilities.

32. Under the explanations regarding Article 15, the Report states that the Committee asks the Turkish government for information in the next report on the measures taken to ensure effective remedies in cases of alleged discrimination in education.⁴⁰ The Report does not refer to any cases related to discrimination in education. Three examples mentioned above are important to present how to discriminate against persons with disabilities due to their parents' alleged terrorism charges. Therefore, the Turkish government should submit the information about the measures taken to ensure effective remedies for cases in question and other similar cases.

ARTICLE 20 - THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX

33. The Parties to the Charter are under obligation to ensure the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

34. According to the US's Turkey 2019 Human Rights Report, *"Women faced discrimination in employment and were generally underrepresented in managerial-level positions in business, government, and civil society, although the number of women in the workforce increased compared with previous years. According to the Turkish Statistics Institute, the employment rate for women in 2018 was 29.1 percent (an increase from 28 percent in 2016), corresponding to 8.84 million women, compared with 65.5 percent employment for men. The World Economic Forum's Global Gender Gap Report 2018*

³⁹ Page 85 of the Report.

⁴⁰ Page 121 of the Report.

recorded that 36.1 percent of women participated in the labor force, compared with 33.8 percent in 2017.”⁴¹

35. Paragraph 3 of Article 4 of the Istanbul Convention states that “*The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or another status.*” The Turkish government, in the Report, presents the legal framework and some measures taken to ensure the effective exercise of the right to equal opportunities and equal treatment. However, Turkey announced the withdrawal from the Istanbul Convention which also aims to prevent the discrimination that women would face in employment and civil society.⁴²

ASSEDEL, L’Association européenne pour la défense des droits et des libertés
assedel.org

⁴¹ 2019 Turkey

⁴² Council of Europe, Turkey’s announced withdrawal from the Istanbul Convention endangers women’s rights, March 22, 2021, at <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>