

Opinion 56 (1971)¹

Draft European Convention on the Legal Status of Migrant Workers

Parliamentary Assembly

The Assembly,

1. Congratulating the Special Representative of the Council of Europe for National Refugees and Over-Population and the Joint Committee on the European Statute for the Migrant Worker on having drafted a European Convention on the Legal Status of Migrant Workers ;
2. Voicing its satisfaction that the Committee of Ministers has transmitted this important draft to the Assembly for its opinion, in accordance with Article 23 (a) of the Statute of the Council of Europe,
3. Expresses the following opinion :

A. Comments on the Convention in general

4. A considerable number of migrant workers who are nationals of States not Members of the Council of Europe now reside and work in the territories of member States. The European Convention on the Legal Status of Migrant Workers, hereinafter called the "Convention", should therefore make provision for the accession of those European non-member States, and possibly certain non-European States from which a considerable number of migrant workers come. The accession of non-member States would also help to extend the legal unification of Europe.
5. The rights of migrant workers as safeguarded by the Convention should be considered as human rights and should therefore apply to every such worker who has legally entered the territory of a Contracting State, whatever his country of origin. In this way, those persons legally residing on the territory of a Contracting State, as refugees, exiles or migrant workers who are nationals of a State which has not ratified the Convention should also enjoy the advantages it confers. This would be fully justified seeing that the preamble to the Convention refers to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. Should this proposal not find favour (although this is unlikely), the provisions of the Convention should not with standing be applicable to refugees in the territory of a Contracting State.
6. References in the Convention to national legislation are justified only when their purpose is to ensure that migrant workers enjoy equality of treatment with native workers. They are not justified where the Convention is dealing with situations peculiar to migrant workers. It is the Assembly's view that, before final adoption of the Convention, such references should be checked to see whether they comply with this rule in every case.
7. The recognition of occupational qualifications in member States of the Council of Europe is of particular importance in connection with migration. The Convention mentions this matter only vaguely and sets no definite criteria. The Assembly welcomes the fact that the Committee of Ministers has included in the

1. Assembly debate on 21 January 1971 (22nd Sitting) (see [Doc. 2883](#), report of the Committee on Population and Refugees). Text adopted by the Assembly on 21 January 1971 (22nd Sitting).



Intergovernmental Work Programme a study on a better alignment of standards of training in a limited number of occupations in commerce, industry and the crafts, and hopes that this study will be able to produce results in the near future.

B. Comments on particular Articles of the Convention

Preamble

The Assembly proposes substituting for the expression "the conditions of work" in the last line of paragraph 7 of the preamble the words "The conditions of life and work" and for "promote the wellbeing" in the third line of paragraph 9, the words "facilitate the social advancement".

Article I : Definition

The Convention does not apply to persons undergoing training or to frontier workers, although these are important categories of migrant workers. The Assembly therefore proposes to the Committee of Ministers that an agreement be drawn up within the Council of Europe governing their status too.

It appears that, for administrative reasons and sometimes for reasons of national policy, certain migrant workers are regarded as seasonal migrant workers, even when their period of residence cannot well be described as "seasonal". This practice may be seriously detrimental to migrant workers, for one who is regarded as seasonal, may, after his contract has expired and he has left the host country, cease to be covered by social security and health services in case of accident or illness until he takes up further employment, even though this will often be in the same host country and with the same firm. The definition of seasonal migrant workers in Article I (2) of the draft Convention should therefore be amended to make it clear that a migrant worker cannot be a seasonal one unless his work really depends on the succession of the seasons, and does not last longer than a certain period. It does not seem acceptable to regard as seasonal a migrant worker who, for national administrative reasons, has to leave his host country after working there for almost one year but may return in the thirteenth month.

In the light of these observations, the Assembly considers that the definition of seasonal workers in the third paragraph of Article I (2) of the draft Convention is unclear. The words "contract for a specified period or for specified employment" in that paragraph are too broad, since the maximum duration of employment for the workers in question is not specified.

The Assembly proposes that the following words be added at the end of the second paragraph of Article I (2) : "Employment is regarded as permanent if governed by a work contract of more than eight months' duration".

In view of paragraph 2 of its general comments, the Assembly proposes that the words "a national of a Contracting Party" in the second line of paragraph 1 should be replaced by "any person", and that "another" in the third line should read "a".

The Assembly also suggests deleting the words "being nationals of one Contracting Party" from the second and third sub-paragraphs of paragraph 2.

Article II : Forms of recruitment

Article II in its present form implies that the administrative costs of recruitment, introduction and placing are to be borne by the migrant worker when not carried out by an official authority.

The Assembly therefore proposes deletion of the words "When these operations are carried out by an official authority" in the second and third lines of Article II (2).

Article V : Formalities and procedure relating to the work contract

The use of both languages in the contract should also be compulsory if recruitment is carried out by an employment agency or an undertaking of some size. If there is more than one official language in the immigration country, the work contract must be drawn up in the language of the region where the migrant worker is to be employed.

The Assembly proposes that the following be inserted after the word "countries" in line 5 of Article V : "and, where applicable, in the language recognised as official and in use in the region in which he is to work", and that the last sentence be worded as follows : "the use of both languages is compulsory in the case of collective recruitment, and in all cases of recruitment by an official authority, an employment bureau or an undertaking employing at least fifty persons."

Article VI : Information

The Assembly proposes adding to the fourth line of the first paragraph, following the word "stay" : "conditions and opportunities for family reunion", and to the same line, after the word "job" : "the possibility of a new work contract being concluded after the first has lapsed..."

Article VIII : Work permit

The Assembly thinks it desirable that a work permit issued to a migrant worker by the authorities of the host country should confer entitlement to a residence permit if such a permit is required.

It proposes that a second paragraph reading as follows be added to Article VIII : "The issue of a work permit shall entitle the holder to a residence permit as provided in Article IX".

The Assembly also suggests adding the following words to the end of the first paragraph : "and international regulations. The renewal of labour permits for permanent workers should be for a period of no less than one year".

Article IX : Residence permit

This Article should contain a reference to Article 4 of the Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Assembly points out, in connection with Article IX (4), that the withdrawal of a residence permit or failure to renew it is a serious step from the migrant worker's point of view. He should therefore be able to appeal against such a decision to an independent body in the host country. The appeal should have the effect of suspending the decision.

The Assembly proposes that the following be added at the end of paragraph 4 : "Each Contracting Party nevertheless undertakes to grant migrant workers whose residence permits have been withdrawn or have not been renewed the right to appeal to an independent judicial or administrative authority. Such an appeal to this authority shall have the effect of suspending such withdrawal or non-renewal until the judicial decision pending takes effect."

Article X : Reception

The Assembly observes that Article X provides migrant workers with certain rights by reason of their particular situation. It therefore feels that the reference to national workers in paragraph 2 is superfluous.

Moreover, a migrant worker often encounters numerous difficulties on arrival in a foreign country, because of his generally slight knowledge of its language, laws and customs. He is thus at a disadvantage compared with native workers. It therefore seems important that Article X should contain a provision requiring Contracting States to set up within their social services special sections for the reception of migrant workers, where no such sections yet exist.

As regards Article X (3), the Assembly welcomes the fact that migrant workers and their families may worship freely. Frequently, however, there are numerous financial difficulties in the way of such worship in the forms laid down by the various religions. In most member States of the Council of Europe, a few religions are subsidised by the State, whereas some of the religions of migrant workers are not subsidised. Subsidies of this kind should be granted wherever possible.

The Assembly proposes deletion of the words "in the same way as national workers" in paragraph 2, and the addition of the following sentence at the end of that paragraph : "Each Contracting Party undertakes to set up, within its employment services, social or other public services, special sections to facilitate or co-ordinate the reception of migrant workers and their families."

It also proposes that for Article X (3) be substituted the following : "Migrant workers and members of their families may worship freely in the immigration country in accordance with their faith, and the Contracting Parties undertake to adopt measures to enable them so to worship under the same conditions as nationals."

Article XII : Family reunion

Because of the lack of uniformity in the age of majority, in the member States of the Council of Europe, application of the term "minor children" in the draft Convention might lead to unequal treatment of migrant workers in the various countries concerned. The Assembly considers that the aim of the Convention should be to achieve maximum harmonisation of the rights and safeguards enjoyed by migrant workers, bearing also in mind certain multilateral instruments.

The Assembly also notes that Article XII (1) would make family reunion difficult or even impossible by reason of the references to Articles IV and IX it contains.

It proposes the deletion of "minor" in the first line of paragraph 1, and the addition of "under 21 years of age" after "children" ; the addition in the third line, after "ascendants" of "and descendants" ; and deletion in the fourth line, after "authorised", of the words "in the conditions laid down in paragraphs 2 and 3 of Article IV and paragraphs 1 and 3 of Article IX of this Convention and...".

The Assembly's suggestions for amending the first paragraph would mean that its provisions could be extended to disabled persons.

Article XIII : Housing

In federal States, matters of housing are sometimes within the competence of the members of the federation. Housing and rents are, however, of particular importance for migrant workers. In cases where legislation in this field is within the competence of federate States they should also be required to treat migrant workers no less favourably than nationals of the federation.

The competent authorities in the immigration country should also ensure that migrant workers are properly housed and not charged excessive rents.

The Assembly proposes adding between paragraphs 1 and 2 : "The competent authority shall grant authorisation for the bringing in of migrant workers to only those employers who have undertaken to secure suitable accommodation, if the migrant worker is unable to make his own arrangements concerning accommodation."

The Assembly also suggests the addition, at the end of the fourth line of paragraph 2, after "to ensure", of the words "that rents conform with the regulations in force and...".

Article XIV : Pre-training - apprenticeship -schooling and vocational and linguistic training - occupational rehabilitation

This Article should make it clear that migrant workers and members of their families have access to all branches of education on the same footing as nationals.

The Assembly has been informed that in some member States migrant workers and their children are not included in scholarship schemes, especially those for secondary and higher education.

The Assembly proposes that the following words be added at the end of Article XIV (3) : "which shall make every effort to grant the children of migrant workers living with their families in the host country the same facilities in this respect as the host country's nationals".

Article XVI : Work contract

The Assembly welcomes the reference to the establishment of a model work contract for migrant workers. It hopes that the final drafting will soon be undertaken and that the model will then be translated into the languages of the main immigration and emigration countries.

Article XVII : Transfer of savings

This Article should be interpreted liberally in order that migrant workers may at any time transfer part of their earnings or savings despite any legal restrictions which may exist in certain countries.

The Assembly proposes deletion of the words "within legal limits" in the first paragraph of Article XVII (1).

Article XIX : Social and medical assistance

The Assembly proposes the deletion of "officially admitted" in the second line.

Article XXI : Death

This Article should not apply only in cases of death as a result of an industrial accident.

The Assembly therefore proposes deletion of the words "deceased as the result of an industrial accident" at the end of the Article.

Article XXVI : Right of access to the courts in the immigration country

Legal aid should include the provision of an interpreter at the court's expense, as provided for in Article 6 (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Assembly proposes the addition, at the end of Article XXVI (2) of the words "... and, in the case of criminal proceedings, the possibility of obtaining the free assistance of an interpreter where they cannot understand or speak the language used in court".

Article XXVII : Use of employment services

The migrant worker has generally learnt his trade in his country of origin, where labour and employment regulations and practices may differ considerably from those in the host country. Many difficulties for migrant workers in this field could be avoided if they were able to apply to a special employment service for migrant workers, the establishment of which is referred to in Article X (Reception). Article XXVII as it stands grants migrant workers the right to make use of employment services ; the text is unclear, however, and the exercise of this right is subject to excessively stringent conditions which would make application of the Article difficult, not to say improbable.

The Assembly therefore proposes that the Article should be worded as follows : "Each Contracting Party recognises the right of migrant workers and of the members of their families officially admitted to its territory to make use of the employment services under the same conditions as national workers, subject to its legal provisions and regulations."

Article XXVIII : Exercise of the right to organise

The Assembly proposes that Article XXVIII be worded as follows :

"The Contracting Parties shall allow migrant workers to organise in trade unions for the protection of their social and economic interests in the same conditions as national workers."

Article XXVIII bis : Participation in the affairs of the undertaking

Another Article, entitled "Participation in the affairs of the undertaking", should be included, indicating that migrant workers should be able to participate, in the same conditions as national workers, in the management and affairs of the undertaking in which they are employed.

The following wording is proposed : "The Contracting Parties shall allow to migrant workers the right to be assimilated as closely as possible to national workers for the purpose of participating in the management and affairs of the undertaking in which they are employed."

Article XXX : Return home

The list in Article XXX (2) merely indicates the essential information to be given to migrant workers. The possibility of providing them with fuller information in certain countries must be kept open.

The Assembly proposes inserting the words "inter alia" in the sixth line of paragraph 2, after the word "regarding".

The Assembly also suggests the addition of a third paragraph, to read : "The Contracting Parties shall act by common agreement to facilitate the return home of migrant workers' children, particularly in providing instruction in the language of the emigration country."

Article XXXI : Application of the Convention to cover seasonal workers

As regards the definition of the term "seasonal migrant worker", the Assembly refers to its proposals in connection with Article I.

Article XXXV : Ad hoc Committee

An international treaty such as the Convention, safeguarding a number of rights, should provide for a system of supervision of its application in the Contracting States, especially as such procedures have already been set up for the European Social Charter and the European Code of Social Security. Article XXXV should therefore give the ad hoc Committee power not only to consider the reports submitted by the Contracting Parties under Article XXXIV of the Convention, but also to prepare draft recommendations to the Committee of Ministers if, after considering the national reports, it feels this is necessary. If the Committee of Ministers adopted these recommendations, it could then transmit them to the governments concerned.

The Assembly proposes that a fourth paragraph worded as follows be added to this Article : "The Committee of Ministers may, on the basis of the conclusions and proposals of the ad hoc Committee, address any necessary recommendations to each of the Contracting Parties."

Article XXXVI : Participation by intergovernmental and non-governmental organisations in the deliberations of the ad hoc Committee

This Article makes provision for participation by governmental and non-governmental organisations in the meetings of the ad hoc Committee. The Assembly urges that it, too, should be associated with the Committee's work. The European Social Charter and the European Code of Social Security may be cited as other cases in which the Assembly is associated in supervisory systems set up by virtue of international instruments.

The Assembly therefore asks that it be invited in a consultative capacity to meetings of the ad hoc Committee, as the draft Convention already provides in the case of the International Labour Organisation, the Organisation for Economic Cooperation and Development and the European Economic Community (Article XXXVI (1)).

The Assembly hopes that the international employers' organisations will be regularly invited as observers to the meetings of the ad hoc Committee.

The Assembly wishes to point out that the ad hoc Committee has to consider national reports, and it therefore feels that it might be valuable to invite representatives of the national employers' and employees' organisations of the State concerned to certain meetings of the Committee, since they would certainly be better able to supply accurate information about the application of the Convention in their own country.

The Assembly proposes adding the words "The Consultative Assembly" at the beginning of paragraph 1, and substituting for the first sentence of paragraph 2 the following : "The ad hoc Committee, mentioned in Article XXXV shall invite international trade union organisations and international organisations of employers to send to its meetings in a consultative capacity, one observer each ; national trade union organisations and organisations of employers should also be invited under the same conditions if necessary."

Article XXXVII : Signature, ratification and entry into force

Bearing in mind paragraph 1 of its comments on the Convention in general, the Assembly suggests the addition, after the first sentence of paragraph 1, of the following : "After the present Convention has entered into force, the Committee of Ministers of the Council of Europe shall be able to invite any non-member State to accede thereto."