Chapter 12

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

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ABSTRACT

When it comes to the protection of the rights of migrant workers and members of their families, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represents an undeniably important international source of law. As one of the main reasons for the adoption of this document, highlighted in the preamble, the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community, is stated therein. In this work, the author will point to the long-term struggle that preceded the entry into force of the Convention itself. Although detailed in the regulation of the rights guaranteed to migrant workers and members of their families, it seems that from the point of view of protection for this category of persons, the most important thing is that certain provisions of the Convention apply to migrant workers who do not have a regulated position, as well as to special categories of migrant workers, such as frontier worker, seasonal worker, seafarer, worker on an offshore installation, itinerant worker and project-tied worker. Also, the author will point out a very worrying fact in the paper, which is that this Convention has been ratified by a rather small number of member states of the United Nations Organisation, noting that the United States of America, Canada, Australia, Russia, China, the United Kingdom, as well as no member states of the European Union have done so. Therefore, in the research, this author, along with a detailed analysis of the provisions of the Convention, will pay special attention to discovering the reasons for this insufficient acceptance of the Convention, and will try to find solutions that would lead to its wider acceptance, and to prevent the protection of migrant workers and members of their families from being implemented only *de iure*, but not *de facto*.

KEYWORDS

migrant workers, members of the family, United Nations Organisation, International Labour Organisation, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

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1. Introductory Remarks

Since its establishment in 1945, the United Nations has focused special attention on the protection of basic human rights and freedoms. Despite the fact that in 1948 the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, which guaranteed basic civil, political, economic and social rights, over the years the body tried to draft international conventions addressing specific groups and rights beyond its Universal declaration.[1] After the preparation and then the adoption of the International covenant on economic, social and cultural rights (1966), The International covenant on Civil and Political Rights (1966), The Convention on the elimination on all forms of Racial Discrimination (1965), the Convention on the Elimination of all forms of Discrimination Against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984), preparations were started for the adoption of the Convention which would regulate the protection of the rights of all migrant workers and members of their families.[2] One of the main reasons for the adoption of this document, is the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community, with an emphasis on the rights of migrant workers and members of their families that have not been sufficiently recognised everywhere and therefore require appropriate international protection. Bearing in mind the importance of this source of law, as well as the problem reflected in the insufficient number of ratifications of this Convention by the member states of the United Nations Organisation, this chapter will point out the significance of this Convention and its historical context, followed by its adoption, relevance and implementation. A special review will be given to the comparison of this Convention with other relevant international, especially conventions of the International Labour Organisation, and regional documents, as well as to the analysis of the structure of the Convention. Finally, before any conclusions are presented, the question of the monitoring and role of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families will be pointed out.

Migration is a global phenomenon, which implies a change of place of residence due to the movement of individuals or groups of individuals, which can be of a temporary or permanent nature.[3] According to a certain number of authors, international population migration is a phenomenon identified with the emergence of capitalism.[4] It is considered that 'one of the major forces that has transformed world history since the 1500s is the large scale movements of peoples from their homelands to other areas of the world to work and settle, whether temporarily or permanently'.[5] During the

1 Hune, 1985, p. 570.
2 Ibid.
3 Krstić, 2018, p. 11.
4 Šunderić, 2001, p. 275.
5 Hune, 1991, p. 800.

17th and 18th centuries, migrations were linked to political, religious and national circumstances, and towards the end of the 19th and the beginning of the 20th century, migrations began to be linked to events or phenomena of a large-scale economic nature, and as a result, the working population mainly migrated from weaker developed countries towards the industrially developed countries of Northern and Western Europe and the United States of America.[6] Migrations of the working population, which occur when a person resides in a foreign country for the purpose of performing a job, are designated as voluntary migration.[7] According to certain statistics 'world voluntary migration from 1500 to 1980 is placed at more than 200 million', while at the beginning of the 21. century, more precisely in 2005, the number of people who have settled down in a country other than their own was estimated at around 191 million, which represents more than 3% of the world's population.[8] It is noticeable that mass migration sometimes escapes the control of the governments of host countries, especially when it comes to illegal migration, as well as the migration of refugees and displaced persons, who in a large number of cases move to the territory of another country, not only fleeing armed conflicts, poverty, persecution , terrorism, violations of human rights, but also searching for suitable employment, as well as migrations that occur as a combination of several reasons, which are labelled as mixed migrations.[9] Regardless of the reason for migration, migrants who are employed in the territory of another country, which is not their country of origin, need to be provided with adequate protection and equal rights that would be guaranteed to domestic citizens. Therefore, it was necessary to establish an appropriate normative framework at the international level, in order to ensure the effective protection of migrant workers and their family members.

Pécoud and De Guchteneire state that 'historically, non-nationals have enjoyed very little legal protection and the dominant idea has long been that rights were connected to nationality and citizenship, and therefore aliens hardly had any rights and used to be mainly protected by the diplomatic services of their country of origin'.[10] Before international conventions were adopted under the auspices of international organisations that guaranteed the protection of migrant workers, the rights of these categories of workers were secured by concluding bilateral agreements between two

6 Šunderić, 2001, p. 275.
A record movement of workers and family members took place in the period between 1815 and 1914, when labour moved from peripheral to core areas. As Hune states, 'Segal and Marston have noted five primary movements amongst other secondary ones in this period that were intercontinental scope: 1) 60 million Europeans left for the Americas, Oceania and south and east Africa; 2) about ten million Russians moved to Siberia and central Asia; 3) one million southern Europeans went to north Africa; 4) some 12 million Chinese and 6 million Japanese relocated to eastern and southern Asia; and 5) 1, 5 million Indians resettled in South-east Asia and south and east Africa.' Hune, 1991, p. 801.
7 Krstić, 2018, p. 11.
8 Hune, 1991, p. 800; De Guchteneire and Pécoud, 2010, p. 2.
9 Krstić, 2018, p. 14.
10 Pécoud and De Guchteneire, 2006, p. 243.

countries. The first contracts regulating the protection of migrant workers mostly related to ensuring their social security, and the first such contract was concluded on 15th April 1904 between Italy and France.[11] According to Professor Šunderić, 'the norms of this contract regulate the protection of workers and insurance against accidents at work, old age, unemployment, as well as the work of women and children, the organization of inspections and other relations'.[12]

A special contribution to the protection of the rights of migrant workers and their families was made by the International Labour Organisation, which, since its foundation in 1919, has devoted considerable attention to the protection of this category of workers. In the Constitution of this organisation, as one of the goals, the 'protection of the interests of workers employed outside their homeland' is singled out, and at the first session of the International Labour Conference, held in Washington, the issue of the normative protection of migrant workers was raised.[13] During the same session, the International Labour Conference adopted two recommendations, which regulate, among other things, the position of migrant workers. Recommendation No. 1 on unemployment regulates the employment of foreign workers, while Recommendation No. 2 on reciprocity and treatment of foreign workers establishes that states should, on the basis of reciprocity, provide foreign workers with protection as prescribed by the law of the country where the work is performed.[14] Despite the above, according to the views of certain authors 'beginnings were difficult, as the ILO's attempts to create standards in the recruitment and treatment of foreign workers found little support in the pre-Second World War context, characterized by economic crises and strong nationalist/protectionist tendencies'.[15]

However, the situation changed a lot after the end of the Second World War, when some of the most important international standards regulating the protection of the rights of migrant workers and their family members were adopted. The Convention concerning Migration for Employment (No. 97) and the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) stand out as the more significant sources of law, adopted under the auspices of the International Labour Organisation. As Professor Šunderić states, both conventions define the meaning of the term migrant worker, and they also specify certain categories of persons to whom their provisions do not apply.[16] It is noticeable that this concept was retained by the creators of the United Nations Convention, and a special connection is found with Convention No. 143, because it regulates the equality of opportunity and treatment, i.e. Article 10 of this Convention foresees that

11 Šunderić, 2001, p. 280.
12 Ibid.
13 Ibid., p. 283.
14 Ibid.
15 De Guchteneire and Pécoud, 2010, p. 6.
16 Šunderić, 2001, 285.

> 'each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory'.[17]

Therefore, it can be concluded that the creators of the United Nations Convention adopted a large number of principles contained in the standards of the International Labour Organisation, when it comes to the protection of the rights of migrant workers and their family members. The above is also a logical solution, if one takes the attention paid to the protection of migrant workers within the scope of the activities of the ILO into account. However, despite the fact that, as Professor Kovaćević states,

> 'the writers of the Convention on the Protection of Migrant Workers and Members of Their Families were largely inspired by ILO standards, the biggest difference between these universal instruments exists in terms of the subjects of irregular migration, which also represents the biggest contribution to improving the position of migrant workers in the international community'.[18]

Based on all of the above, we can accept the views of certain authors who justifiably claim, linking the activities of the United Nations Organisation and the International Labour Organisation regarding the protection of migrant workers, that 'the evolutionary process which shaped the body of ILO standards on migrant workers was crucial to the elaboration of the UN Convention'.[19] The above coincides with the claim that 'without the ILO or the UN there would be no international standards pertaining to migrant workers'.[20]

17 The Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), Art. 10.
18 Also, it should be borne in mind that for certain categories of workers, the standards of the International Labor Organization provide wider protection than was done by the United Nations Convention, which indisputably regulates certain rights of migrant workers in more detail, than was done by Convention No. 97 and Convention No. 143. The above can best be seen when it comes to the rights of seasonal workers, to which all the provisions of convention no. 97 and No. 143 are applied, while according to the provisions of the OUN Convention, the protection of seasonal workers can be limited. A similar provision is made for border workers, as well as for workers who are engaged in a specific project. Quoted from: Kovačević, 2021, pp. 834–835.
19 Hasenau, 1991, p. 696.
20 Pécoud, 2017, p. 69.

2. Adoption of Convention

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted on 18th December 1990 by the United Nations General Assembly. As stated in the Fact Sheet from 2005, of the Office of the United Nations High Commissioner for Human Rights, the adoption of the convention was preceded by many years of discussions, reports and recommendations on the subject of migrant' rights.[21] Almost twenty years before the adoption of this Convention in 1972, the United Nations openly declared its concern about the endangered rights of migrant workers for the first time, when the Economic and Social Council, within its resolution 1706 (LIII) expressed alarm at the illegal transportation of labour to some European countries, and at the exploitation of workers from some African countries in conditions resembling slavery and forced labour.[22] In the same year the General Assembly, within resolution 2920, condemned the ubiquitous cases of discrimination against foreign workers and called upon Governments to end such practices and to improve conditions for the reception of migrant workers in host States.[23]

There is a widespread opinion in the scientific and professional literature that the adoption of The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represents a great success of the international community, especially of the United Nations.[24] The aforementioned stems from the efforts of this organisation, which have been to recognise, both *de facto* and *de iure,* the need for the legal protection of the rights and dignity of millions of migrants who contribute to the well-being and development of the countries of their reception, as well as the countries of their origin, and therefore cannot deny that with the adoption of the Convention, significant progress has been made in terms of ensuring adequate legal protection for migrant workers, especially if one takes into account the fact that the basic provisions of the Convention apply to all migrant workers, regardless of their legal status.[25]

According to the views of certain authors, the 'Convention represent the most comprehensive international treaty protecting migrants' rights and is therefore a crucial instrument in fostering respect for migrants human rights throughout the world'.[26] This sourcing of rights rather than establishing new rights offers a more precise interpretation of human rights in the case of migration.[27] It is indisputable that most of the rights guaranteed by the Convention were also recognised by other

21 United Nations Office of the High Commissioner for Human Rights, 2005, p. 2.
22 Ibid.
23 Ibid.
24 Kovačević, 2007, p. 225.
25 Ibid.
26 Pécoud and De Guchteneire, 2006, p. 242.
27 Ibid., p. 246.

conventions that had as their subject the regulation of the rights of migrant workers, but their application to non-nationals had not been specified.[28]

It is interesting that the Convention entered into force only on 1st July 2003, a full 13 years after its adoption by the General Assembly of the United Nations. Twenty ratifications were needed for the Convention to enter into force, as some authors state that the 'Convention had the slowest progress between adoption and entry into force and it has the smallest number of participating countries'.[29] The above is confirmed by the fact that until today (October 2024) the convention has been ratified by only 62 member states of the United Nations, which is less than one third of the members of the United Nations Organisation.[30] However, what is noticeable is that this Convention was mostly ratified by the member states of the United Nations, which represent the home states, that is, the states from which migrant workers leave. This document has not been ratified by the countries to which the largest number of migrant workers arrive to, such as the United States of America, Canada, Australia, Russia, China, the United Kingdom and every member state of the European Union. It is noticeable that the states that have ratified the convention, according to Peourd and de Guchteneire, are 'the countries that are home to only a very small percentage of the world's total migrant population, implying that most migrants are currently not protected by the ICRMW'.[31] It should be noted that the obligation of the state that decides to ratify is to do so to the Convention in its entirety, which means that the state may not exclude the application of any Part of it, or exclude any particular category of migrant workers from its application.[32] This practice differs from the practice applied in the ratification of International Labour Organisation standards, where there is flexibility in the ratification of a significant number of conventions, among others the Convention

28 Ibid.

29 The Convention stipulates that the Convention shall be open for signature by all States. But, as Pécoud and Guchteneire state 'a signature does not establish a state's consent to be bound by the treaty, but it expresses its willingness to continue the treaty-making process; it enables the signatory state to proceed to ratification and is usually done by the executive branch of government'. De Guchteneire and Pécoud, 2010, p. 11; Battistella, 2010, p. 47.

30 The Convention was ratified by the following countries as of September 2024: Albania, Algeria, Argentina, Azerbaijan, Bangladesh, Belize, Benin, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Chad, Chile, Columbia, Congo, Cote d'Ivoire, Ecuador, Egypt, El Salvador, Fiji, Gambia, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Indonesia, Jamaica, Kirgizstan, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritania, Mexico, Morrocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Saint Vincent and the Grenadines, Sao Toma and Principe, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Togo, Türkiye, Uganda, Uruguay, Venezuela and Zimbabwe.

31 Pécoud and De Guchteneire, 2006, p. 249.

32 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 88.

concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143).[33]

In the scientific literature, one of the main reasons for the non-ratification of the Convention is the protection of migrant workers in an irregular position, because many states consider that the corresponding provisions violate the principle of state sovereignty and the exclusive right of each state to regulate the entry and stay of foreigners on their domestic territory, as well as their protection regime.[34] However, as Professor Kovačević points out,

> 'it seems that this objection is not firmly founded, since the Convention itself provides that 'nothing in this Part of the Convention (Part III of the Convention) shall be interpreted as implying the legalization of the position of migrant workers and members of their families who do not have documents or are in an irregular situation or the right to such legalization of their situation, nor does it affect measures aimed at ensuring healthy and fair conditions for international migration'.[35]

Also, according to the views of some authors, an additional reason for not ratifying the convention is that 'migrants' rights are already dealt with by other international treaties, including notably two ILO Conventions and the European Convention on the Legal Status of Migrant Workers'.[36] As another possible reason, the fact that the focus of this Convention is not on civil and political rights, but on social and economic rights, being known as the rights of the second generation of human rights, the effective implementation of which require significantly more resources than with the first generation of human rights.[37]

33 Convention no. 143 stipulates that 'Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention'. The Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), art. 16, para. 1.

34 Kovačević, 2007, p. 226.

35 Ibid.

36 Pécoud and De Guchteneire, 2006, p. 256.
The European Convention on the Legal Status of Migrant Workers from 1977 regulates the most important aspects of the legal status of migrant workers, with the aim of ensuring equal living and working conditions, as well as of domestic citizens. This source of law includes the rules on the employment of foreigners, their medical and professional testing during employment, the issuance of residence permits and work permits, the right to re-employment in case of involuntary unemployment and no-fault unemployment, as well as the services of national employment services. This Convention was ratified by only 11 member states of the Council of Europe (Albany, France, Italy, Netherlands, Norway, Portugal, Republic of Moldova, Spain, Sweden, Turkey and Ukraine). More details at: Kovačević, 2021, p. 839 [Online]. Available at: https://www.coe.int/en/web/Conventions/full-list?module=signatures-by-treaty&treatynum=093 (Accessed: 15 February 2026).

37 Pécoud, 2017, p. 60.

Regarding the member states of the European Union, the reason for not accepting the convention is often EU membership itself, despite the fact that the authoritative sources of EU law set only minimum standards and do not prevent the member states from accepting more advanced standards.[38] However, a large number of member states perceive the extent of European integration in the field of immigration policy as an obstacle to accessing universal international instruments in this area.[39] There are also legal obstacles, that refer to situations in which national laws would not be compatible with the Convention's provisions and would therefore need to be changed in the event of ratification.[40] Also, as Pécoud states,

> 'the non-ratification of the ICMW can also be interpreted as a purely political (or electoral) problem, because as foreigners, migrants are not citizens and (usually) cannot vote; ratification would then happen only in migrants' interests are understood as close to citizens', or if electorates were to express a solidarity with migrants and to call upon their governments to grant them rights'.[41]

It is also stated that 'given the small number of states that have ratified Convention, many countries fear to be among the first in their region to ratify it'.[42] Standing out amongst the strongest arguments against the ratification of the Convention, are the views of certain Governments in industrialised countries who have claimed that the Convention is far too detailed and ambitious, and that states' lack of interest showed that they question its relevance and usefulness.[43]

Finally, the information about the acceptance of the individual complaint's procedures under article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is devastating. Based on the available statistics, only seven member states of the Organisation of the United Nations have accepted this possibility, which does not allow individuals to submit individual complaints to the Committee on the Protection on the Rights of All Migrant Workers and Members of Their Families, because according to the Convention, the provisions of Article 77 will enter into force only when ten member states have accepted these individual complaints procedures.[44]

As a result of the previous analysis, and in connection with the problem of the insufficient number of ratifications of the Convention, the views of the authors who

38 Kovačević, 2021, p. 835.
39 Ibid.
40 De Guchteneire and Pécoud, 2010, p. 17.
41 Pécoud, 2017, p. 67.
42 Pécoud and De Guchteneire, 2006, p. 258.
43 De Guchteneire and Pécoud, 2010, p. 12.
44 The following countries accepted the individual complaints procedures under the Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Chad, Ecuador, El Salvador, Guatemala, Mexico, Turkey and Urugay.

consider this international document as one of the most neglected treaties in international human rights law seem more than justified.[45]

3. An Analysis of the Convention Structure

3.1. Introduction

The Convention, not counting the preamble, consists of nine parts: part I – Scope and Definition; part II – Non-discrimination with Respect to Rights; part III – Human Rights of All Migrant Workers and Members of their Families; IV – Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation; part V– Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families; part VI – Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families; part VII – Application of the Convention; part VIII – General provisions and part IX – Final Provisions.

It could be said that the key sections of the Convention are Parts Three and Four, since these parts regulate the fundamental rights of migrant workers. Of particular importance is Part Three of the Convention, entitled 'Human Rights of All Migrant Workers and Members of Their Families'. Part Four of the Convention is dedicated to other rights of migrant workers and members of their families who have appropriate documents or regular status, and that is exactly what it is entitled. From the very wording of the titles of Parts Three and Four of the Convention, it can be concluded that Part Three applies to all migrants, regardless of their migration status, while the application of the provisions of Part Four of the Convention is reserved exclusively for migrants (and members of their families) who have appropriate documents or regular status.

3.2. Preamble

In the preamble of the Convention, the creators of the Convention refer to some of the most important international standards, adopted under the auspices of the United Nations and the International Labour Organisation, which also contain provisions on the protection of migrant workers. Provisions are highlighted for the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Relevant instruments that were elaborated within the framework of the International Labour Organisation have also been taken into account, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the

45 Pécoud, 2017, p. 57.

Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151). The preamble also highlighted the importance of the work done, in connection with migrant workers and members of their families in various organs of the United Nations, such as among others, the Commission on Human Rights and the Commission for Social Development and the United Nations Educational, Scientific and Cultural Organisation.[46] The importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community, is particularly emphasised, as well as the fact that the rights of migrant workers and members of their families have not been sufficiently recognised everywhere and therefore require appropriate international protection. It is also stated that migrations often cause serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family. Also, the creators of the convention pointed out that workers who are non-documented or in an irregular situation are in a particularly unfavourable position, because these categories of migrants are often employed under less favourable conditions of work than other workers and that certain employers take this as an inducement to seek such labour in order to reap the benefits of unfair competition. It has also been taken into account that recognition of the much broader fundamental rights of all migrant workers will affect the reduction of the desire for employment under unfavourable conditions of migrant workers who are in an emergency situation and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the State concerned. Based on everything stated in the preamble, it is concluded that there is a need to ensure the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which can be universally applied.

3.3. Part One of the Convention

The first part of the Convention mostly contains norms which determine the field of application of the Convention. Within it, basic subjects are defined, whose rights are recognised in the following parts. The first article states that the Convention is applicable to all migrant workers and members of their families without distinction of any kind, including sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.[47] This confirms the principle of equal chances and treatment, as one of the basic principles promoted in the standards of the

46 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Preamble.
47 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 1.

United Nations Organisation, and above all in the framework of the Universal Declaration of the UN which foresees, in an almost identical way as the Convention, that

> 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty'.[48]

In addition to the above, it is determined that the Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.[49] The aforementioned solution was not well received by the professional public, and as some authors stated, 'Even during the drafting of the text of the Convention, developed countries were against establishing such a broad field of application of the Convention, while underdeveloped and poor countries wholeheartedly supported such a solution'.[50] The above can be considered as another reason for the insufficient number of ratifications of the Convention, bearing in mind that the creators of the Convention accepted the solution advocated by the developing countries, from which the majority of migrant workers originate.

A migrant worker is defined as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.[51] As Professor Kovačević states,

> 'taking into account the importance of this UN instrument in the system of international instruments for the protection of human rights, it can be expected that the aforementioned definition will be universally accepted, especially for the reason that the relevant convention recognizes the right of all migrant workers to enjoy human rights regardless of their legal status'.[52]

In addition to the term migrant worker, the terms seasonal worker, seafarer, worker on an offshore installation, itinerant worker, project-tied worker, specified-employment worker and self-employed worker, all of which refer to a migrant worker who is

48 Universal Declaration, Art. 2.
49 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 1, para. 2.
50 Kovačević, 2021, p. 833.
51 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 1.
52 Kovačević, 2021, p. 832.

engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognised as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

The term 'members of the family' refers to persons married to migrant workers or having a relationship with them that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.[53] Both migrant workers and members of their families are expected to have the above status provided that they are authorised to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.[54] However, the status of migrant workers and members of their family will also be given to those who do not have valid documents or regular status, and because they do not meet the conditions established in the previous paragraph.

Finally, this part defines the terms of country of origin, country of reception and country of transit. The term State of origin is defined as the State of which the person concerned is a national, while the term state of employment is defined as 'a State where the migrant worker is to be engaged, is engaged or has been engaged in remunerated activity, as the case may be'.[55] Finally, the term 'State of transit' means 'any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence'.[56]

3.4. Part Three of the Convention

This section contains provisions that at first glance could be called 'variegated', bearing in mind that they regulate the most diverse human rights guaranteed to migrants, both civil and political, as well as economic and social. It might even be argued that the sequence of the aforementioned provisions could not be considered systematic, but rather that the provisions guaranteeing the most diverse rights to migrant workers and members of their families are listed without any clear order. On the one hand, many of these articles, specify the application of rights spelled out in the International Covenants on Civil and Political Rights and on the International Covenants on Economic, Social and Cultural Rights. On the other hand, the Convention also includes a number of rights addressing specific protection needs and providing additional guarantees in the light of the particular vulnerability of

53 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 4.
54 Ibid., Art. 5.
55 Ibid., Art. 6.
56 Ibid., Art. 6.

migrant workers and members of their families.[57] Therefore, within the third part of the Convention, we can speak of two groups of provisions, which are unfortunately mixed: firstly, those that guarantee respect for migrants' fundamental human rights and secondly, those that assume that migrants are a vulnerable group, and that they may be particularly endangered in certain situations – therefore, they prescribe the protection of those rights that may be violated precisely in those specific situations in which migrant workers and members of their families may find themselves.

3.4.1. The First Group of Provisions within Part Three of the Convention

The *first* group of provisions includes the provision of Article 9, which guarantees migrants and their family members the right to life, which is stipulated as protected by law. At this point, it is not very clear which law is meant. It should also be noted that the guarantee of the right to life should be stipulated in the first place as one of the basic human rights, and not after the article that protects other rights of migrants, namely those that we have placed in the rights regulated by the second group of provisions (rights reserved for migrants as a specific group).

Article 12 paragraph 1 of the Convention stipulates that migrant workers and members of their families have the right to freedom of thought, conscience and religion, while Article 13 paragraph 1, specifies the right to hold opinions without interference. Furthermore, Article 14 lays down the right to the privacy of migrant workers and members of their families, as the cited article states that

> 'no migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation (...)'.

Article 15 of the Convention stipulates that 'no migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others'. The cited article primarily protects the property rights of migrants and their family members, although the concept of property is much broader than the concept of property rights. We can make this conclusion based on the fact that the article states that the right to property will be protected regardless of whether it is owned individually or in community with another person, which we interpret to mean that the right to property will be protected regardless of whether the migrant (or a member of his or her family) is the exclusive owner of a movable or immovable property or, on the other hand, he or she is only one of the owners – either a co-owner or a joint owner – of a specific property. In the event of a migrant worker or a member of his or her family being deprived of their property rights through an expropriation procedure, they will, as is the rule, have the right to appropriate compensation. Article 32 should also be cited here, as it guarantees the right of migrant workers and

57 United Nations Office of the High Commissioner for Human Rights, 2005, p. 5.

members of their families to transfer their earnings and savings and their personal effects and belongings after the end of their stay in the State of employment.

Article 24 states that 'every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law'. Regarding the term 'person', the drafters of the Convention probably meant a legal entity in the sense of a natural person as a person with legal capacity, that is, someone with the ability to be the holder of all rights and obligations recognised by the legal order.

As the Convention includes in its title members of the families of migrant workers, it is not surprising that two articles are dedicated exclusively to children of migrant workers, in the sense that 'each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality'.[58] Also, every child of a migrant worker shall have the right of access to education on the basis of the equality of treatment with nationals of the State concerned – access to public pre-school educational institutions and schools – regardless of the fact that in a specific case, their status is unregulated in relation to the residence or employment of either parent, or that their status is possibly unregulated in relation to the residence of the child him or herself, and also in the country of employment. The latter, that children are recognised as having the right to education regardless of the regularity or irregularity of the parents' status, was not necessary to state in the text of the article itself, since the entire third part of the Convention indicates by its title that these are rights guaranteed to all migrants and members of their families, where 'all' refers precisely to the fact that it is irrelevant whether a particular migrant worker or a member of his or her family has a regular residence or employment status or not.[59]

Migrant workers and members of their families are also guaranteed the right to medical treatment when necessary.[60] This article again emphasises that such emergency medical care shall not be refused to them for any irregularity with regards to their stay or employment.[61] The same criticism could be levelled at this article as at Article 30 of the Convention, for the same reason that has already been stated. Namely, in Art. 28 and 30 it is emphasised that the rights contained in these articles are guaranteed to all migrant workers and members of their families regardless of the regularity of their status in terms of residence and employment, which is unnecessary considering the title of the entire third part in which the cited articles are located. However, perhaps the creators of the Convention decided on such formulations since they are dealing with matters of vital importance for the lives of migrants in a foreign country, namely medical services and access to the education system, and therefore they believed that it should be emphasised that these rights are available to everyone without exception.

58 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 29.
59 Ibid., Art. 30.
60 Ibid., Art. 28.
61 Ibid., At. 28.

3.4.2. The Second Group of Provisions within Part Three of the Convention

The *second* group of provisions includes those that guarantee migrants the rights they need to be protected in any specific situations they may find themselves in, given their situation, and above all the fact that they are outside the territory of their country of origin. Hence, migrant workers and members of their families are guaranteed the right to leave any country, including their country of origin, as well as the right to enter at any time and remain in their country of origin;[62] as well as the right to respect for their cultural identity.[63] The Convention also guarantees this group of persons that they will not be subjected to mass expulsions, except in cases provided for by law.[64] In the event of expulsion, but also in all other cases where the rights recognised in the Convention are in doubt, migrant workers (and members of their families) shall have the right to seek assistance from the consular and diplomatic missions of their State of origin or from the State representing the interests of their State of origin.[65]

Within this second group of provisions, several subgroups of provisions can be distinguished. The first subgroup includes those provisions that are dedicated to the protection of the physical integrity of migrant workers and members of their families, and the protection of migrants from violence in any form. Thus, Article 16 of the Convention stipulates that migrant workers and members of their families shall have the right to the liberty and security of person; that they shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions; that they shall not be subjected individually or collectively to arbitrary arrest or detention. Article 10 stipulates that no migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, which is in line with the provisions of the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

With the same aim Art. 11 of the Convention was formulated, which guarantees that migrant workers and members of their families will not be held in slavery. At first glance, the cited provision seems outdated, since the institution of slavery does not exist today. However, given that there are cases which actually took place, the creators of the Convention believed that this provision should belong in such a text. The same article prohibits forced or compulsory labour except in exceptional and justified situations specified in this Convention. Therefore, prohibition of forced or compulsory work shall not exclude cases where imprisonment with hard labour may be imposed as the punishment for a crime, the performance of hard labour in pursuance of a sentence to such a punishment by a competent court, or any work or service normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention,

62 Ibid., Art. 8 paras. 1–2.
63 Ibid., Art. 31.
64 See: Ibid., Art. 22.
65 Ibid., Art. 23.

any service exacted in cases of emergency, of calamitous threat of life, or of the well-being of the community and any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.[66] The aforementioned part of Article 11, which refers to the prohibition of compulsory and forced labour, seems more than justified, bearing in mind that migrants are often exposed to forced labour and exploitation, and it is important that states systematically and continuously combat these phenomena.[67] It is particularly important to bear in mind that these phenomena are also prohibited by other relevant standards of the United Nations, as well as by the International Labour Organisation conventions No. 29 and No. 105, which have been included in the fundamental conventions of this organisation since 1998 and have been ratified by a large number of member states. Finally, the prohibition of forced and compulsory work is also established in Art. 4 of the European Convention on Human Rights and Fundamental Freedoms, and the case law of the European Court of Human Rights is also an indispensable source.

Another special subgroup of provisions could be distinguished, which guarantees the protection of migrant workers and members of their families in situations where they are deprived of their liberty due to arrest, detention or imprisonment. In this case, the Convention guarantees them all rights that, at the current stage of development of almost every society and of human rights in general, are regularly guaranteed to persons deprived of their liberty.[68]

The third subgroup of provisions, all within the second group, would include those provisions of the Convention that guarantee certain rights to migrant workers during trials (the right to equality with nationals of the state in which the migrant worker is being tried; the right to a fair and public hearing; the right to the presumption of innocence; the right to be brought before a court without delay; the right to legal assistance; the right to a free interpreter; the right to legal remedies, etc.).[69] These rights, which can be condensed to the right of migrants to access justice, are of particular importance for migrant workers, considering that they are in an even more disadvantaged situation, because in addition to their lack of knowledge of the legal system and language, they often face trauma, disorientation and sensitivity, and therefore need additional help and support.[70] For this reason, it was necessary to regulate these rights in detail, all with the aim of ensuring effective legal protection.

In the fourth subgroup of provisions (within the second group), we would place the provisions of Articles 25, 26 and 27 of the Convention, which regulate the fundamental rights of migrant workers in the field of work and social security, all with the aim of applying to them the same treatment as domestic citizens. According to the provisions of the Convention, migrant workers are guaranteed some of the most

66 Ibid., Art. 11.
67 Krstić, 2018, p. 33; For more details: Costello, 2015, pp. 189–227.
68 See: Art. 16 paras 5–9. and art. 17 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
69 See: Ibid., Art. 18.
70 Krstić, 2018, p. 37.

important individual labour rights, such as the right to remuneration; the right to limited working hours; weekly rest, holiday with pay; the right to protection at work, and health care, as well as rights related to protection from termination of employment. Equal treatment of domestic workers and migrant workers in terms of employment has also been foreseen in areas such as, the minimum age of employment, the restriction on working from home, and any other matters which according to national law and practice, are considered a term of employment.[71]

In addition to individual rights, migrant workers, as well as their family members, are guaranteed the following collective rights: to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organisation concerned, and to seek aid and assistance of any trade union and of any such association.[72] They are also guaranteed to freely join any trade union or any such association, which fits into the concept of a positive form of freedom of association, guaranteed by the relevant standards of both the United Nations and the International Labour Organisation.

Finally, when it comes to social security rights, the Convention stipulates that migrant workers and members of their families shall enjoy the same treatment granted to nationals in the State of employment, so long as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties, with a note that the competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangement to determine the modalities of application of this norm.[73] It is also foreseen that where the applicable legislation does not allow migrant workers and members of their families a benefit, the States shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.[74]

3.4.3. Criticism of Part Three of the Convention

As we have already pointed out at the beginning, the main criticism of Part three of the Convention is the lack of systematicity of the guaranteed rights, which are regulated by the provisions of this Part of the Convention, which follow one after the other without any particular or logical sequence. Therefore, we have attempted to make some kind of systematisation of the cited provisions, according to the criterion of the similarity of the rights guaranteed by them. In this way the analysis of Part three of the Convention has been carried out in this part of the paper.

Another criticism is about the content of individual provisions, and can be formulated through the question: Were individual provisions really necessary and does

71 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 25.
72 Ibid., Art. 26.
73 Ibid., Art. 27 para. 1.
74 Ibid., Art. 27 para. 2.

the large number of provisions lead to member states of the United Nations refusing to ratify this convention? Thus, as an example, we can take the provision of Art. 29, paragraph 1, which stipulates that 'no migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation'. The intention, and above all the fear, of the creators of the Convention when creating this text is clear. An awareness of the vulnerability of the group of people to whose protection the text of the Convention is dedicated has led to the fact that in several places it may even be 'excessive' in prescribing the measures of that protection. One example is the provision just quoted, which stipulates that no one shall be deprived of his liberty in the event of a failure to perform a contractual obligation. The question could arise concerning under which legal system the creators of the Convention saw that in the event of the non-performance of a contractual obligation, the contractor could be sentenced to imprisonment. Such a sanction is not possible in civil law, since in that field of law all sanctions are of a property nature. Hence, the sanction for non-performance of a contractual obligation could be a request for performance, or the right to terminate the contract and the right to compensation for damages. Of course, we are aware that members of vulnerable groups can be victims in many situations, but unfortunately, this cannot be prevented using this method. On the contrary, such formulations become meaningless and deservingly become the subject of harsh criticism from lawyers.

The third criticism would be similar to the second, in that it could again be asked whether the protection of migrant workers (and their family members) has perhaps been 'overdone'. But here we are referring to 'overdoing' that has gone in a completely different direction from that described in the previous paragraph. Let us take, for example, Art. 19, para. 2 of the Convention. It stipulates that 'humanitarian consideration related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family'. It could be said that with this provision, the creators of the Convention not only 'overdid' their efforts in protecting migrant workers but also entered illegal territory. Instead of criticising this position, we can ask the question: Can we be surprised that leading European countries do not accept the Convention? If we only look at the text of the provision that stipulates that when sentencing a migrant worker or a member of their family who has committed a criminal act, the humanitarian aspect of their status will be taken into account, which we interpret as also being taken into account as a mitigating circumstance, which means placing migrant workers who are the perpetrators of criminal acts in a more favourable position compared to citizens of the receiving countries.

3.5. Part Four of the Convention

Unlike Part three of the Convention, which contains provisions regulating the rights reserved for all migrant workers and members of their families regardless of the regularity of their migration status, Part four of the Convention is dedicated only to those

migrant workers (and members of their families) who have appropriate documents or a regular status. Thus, for persons with regular status, i.e. appropriate documents, in addition to the rights regulated by Part three of the Convention, a whole series of rights are reserved for and guaranteed to them.[75]

In Part Four of the Convention, several provisions have been included that have as their primary objective the protection of the families of migrant workers, since within the meaning of Article 44, paragraph 1 of the Convention, Member States recognise that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It is precisely for this reason that the Convention imposes on States Parties the corresponding duties – to take appropriate measures to ensure the integrity of the families of migrant workers,[76] as well as measures aimed at facilitating the reunification of migrant workers with their spouses, persons who have a relationship with migrant workers that, under positive legislation, has the character of a marital union (obviously, this refers to extramarital partners), and their unmarried children whom they support.[77]

When it comes to family members of migrant workers, the Convention stipulates that they shall have equal treatment in the country of employment with that of nationals of that country. This means equal treatment in terms of access to, educational institutions and services, vocational guidance and training institutions and services, social and health services, cultural life and their right to participate in it.[78] With the aim of further protecting the families of migrant workers, the Convention also predicts that migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or to any other State.[79]

Furthermore, the Convention also regulates the right to the temporary absence of migrant workers and members of their families, without consequences on their residence and work permits, which they will be able to exercise especially when they have certain obligations in their country of origin;[80] on the other hand, in the case of the death of a migrant worker or the dissolution of their marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State, on the basis of family reunion, an authorisation to stay.[81] When making a decision, the State of employment shall take into account the length of time they have already resided in the host State. In the event that family members do not receive a residence permit, they will be allowed a reasonable period of time in order to enable them to settle their affairs in the State of employment.[82]

75 Ibid., Art. 36.
76 Ibid., Art. 44 para. 3.
77 Ibid., Art. 44 para. 3.
78 Ibid., Art. 45 para. 1 items a–d.
79 Ibid., Art. 47.
80 Ibid., Art. 38.
81 Ibid., Art. 50 para. 1.
82 Ibid., Art. 50 para. 2.

Special attention is paid to the care of children of migrant workers, for whom it is necessary to facilitate their integration in the local school system (particularly with respect to teaching them the local language) as well as teaching them their mother tongue and culture.[83]

Several articles of the Convention are only devoted to migrant workers and not to their families members, either because they guarantee rights that are already provided by another article to family members of migrant workers, or because they concern matters that concern migrant workers exclusively. In all these cases, it is also provided that migrant workers shall be treated equally to nationals of the State of employment. Thus Article 43 stipulates that migrant workers shall enjoy equality of treatment with nationals of the State of employment with respect to their access to educational institutions and services subject; with respect to their access to vocational training and retraining facilities and institutions; with respect to social and health services; with respect to access to housing, including social housing schemes, and protection against exploitation with respect to rents and with respect to their access to and participation in cultural life.[84] Furthermore, when it comes to the articles of the Convention dedicated only to migrant workers, and not to members of their families, which provide migrant workers with the same equal treatment as that for nationals of the State of employment, Articles 54 and 55 of the Convention should also be mentioned. They provide that migrant workers will be equal to domestic citizens in terms of protection against dismissal, unemployment benefits, and access to alternative employment in the event of loss of work or termination of other remunerated activity,[85] as well as when performing paid activities.[86] In connection with the mentioned rights, it is stipulated that

> 'if a migrant worker claims that the terms of his or her work contacted have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the state of employment'.[87]

In addition to the previously cited articles, Part four of the Convention prescribes some other rights for migrant workers, namely: the right for them to be informed regarding their admission to the country of employment, and in particular regarding the stay and remunerated activities they may engage in.[88] When it comes to paid activities carried out by migrant workers in the territory of the State of employment,

83 Ibid., Art. 45 paras. 2–3.
84 Ibid., Art. 43 para. 1 items a, b, c, d, e and g. Cf. Art. 43 para. 1 with Art. 45 para. 1. Their content is somewhat similar; the first article regulates the rights of migrant workers, while the second is dedicated to the protection of family members of migrant workers.
85 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 54 para. 1 items a–d.
86 Ibid., Art. 55.
87 Ibid., Art. 54 para. 2.
88 Ibid., Art. 37.

it should be noted that the Convention devotes several articles to this issue. Namely, where separate authorisations to reside and to engage in employment are required by national legislation, the States of employment shall issue an authorisation of residence to migrant workers for at least the same period of time as their authorisation to engage in remunerated activity.[89] A migrant worker who ceases to perform paid work before the expiration of his/her work permit shall not be considered a person with an irregular status, nor will he or she lose his or her residence permit.[90] This is the case in countries of employment where the migrant worker can freely choose which paid activity they wish to perform.[91]

3.6. Part Five of the Convention

Part five of the Convention contains provisions that apply exclusively to special categories of migrant workers and members of their families. Within the so-called special categories of migrants, the Convention distinguishes six groups of workers: frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers and self-employed workers. The Convention devotes a separate article to each of these groups of workers, regulating their position. However, the definitions for each of these categories of workers are contained, as previously stated, in Article 2, paragraph 2 of the Convention.

The term frontier worker means a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week.[92] The specificity of the position of this category of migrant workers, on the one hand, is that they are indisputably present in some way in the territory of the State of employment, since they work there, but on the other hand they do not have a permanent residence in the State of employment. This is precisely why the question arises as to whether the provisions of Part Four of the Convention can be applied to them at all, since as has already been discussed, they are reserved only for those migrant workers (and members of their families) who have the appropriate documents or a regular position. Therefore, Article 58, paragraph 1 expressly stipulates that this category of migrant workers will have those rights provided for in the aforementioned Part of the Convention that can be applied to them due to their work and presence in the territory of the State of employment, taking into account that they do not have a permanent residence in that State.

A seasonal worker is defined by the Convention as a migrant worker whose work by its character depends on seasonal conditions and is performed only during a part

89 Ibid., Art. 49 para. 1.
90 Ibid., Art. 49 para. 2.
91 Ibid., Art. 49 para. 2. For States of employment in which a migrant worker is allowed to freely choose his remunerated activity, in addition to the cited Art. 49, see also Art. 52 of the Convention. For States of employment in which a migrant worker is not allowed to freely choose his remunerated activity, see: Art. 51 of the Convention.
92 Ibid., Art. 2 para. 2 item a.

of the year.[93] As in the case of frontier workers, the Convention also reserves the possibility of applying the provisions of Part Four to seasonal workers, which regulates those rights that may be applied to them by reason of their presence and work in the territory of the State of employment, and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only a part of the year.[94]

The third category of migrant workers, and within the broader group, is the so-called special categories of migrant workers, includes itinerant workers. It is a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation.[95] These workers shall enjoy those rights under Part Four of the Convention, due to their presence and work in the territory of the State of employment, which is consistent with their status as a migrant workers in that State.[96]

The most detailed regulation is the position of so-called project-tied workers. The term refers to a migrant worker admitted to a State for a defined period to work on a specific project being carried out in the State by his or her employer.[97] It should be noted that in the case of regulating the position of frontier, seasonal and itinerant workers, which was written about previously, the drafters of the Convention have not made mention of members of their families, while they do so in the case of so-called project-related workers. However, when it comes to this category of migrant workers, although protection is extended to members of their families, the range of provisions from Part Four of the Convention that apply to them is narrowed (which was not the case with the previous categories). Namely, the provisions that would guarantee this category of workers' rights are those in relation to access to vocational guidance and placement services; those in relation to their access to vocational training and retraining facilities and institutions, and access to housing, including social housing schemes and protection against exploitation in respect of rents.[98] Also, this category of migrant workers will not, by the very logic of this process, and because they are workers working on a specific project, be subject to the provisions of the Convention applying to those migrant workers who perform certain paid activities (provisions regarding the limitations and conditions under which these activities can be chosen, provisions providing protection against dismissal, and protection in the event of unemployment, etc.).[99] With regards to members of their families, they will not enjoy, while under employment in the State, equality of treatment with nationals of the State, in relation to access to vocational guidance and training institutions and services.[100]

93 Ibid., Art. 2 para. 2 item b.
94 Ibid., Art. 59 para. 1.
95 Ibid., Art. 2 para. 2 item e.
96 Ibid., Art. 60.
97 Ibid., Art. 2 para. 2 item f.
98 Ibid., Art. 43 para. 1 items b–d.
99 Ibid., Arts. 52–55.
100 Ibid., Art. 45 para. 1 item d.

Within the category of 'specified-employment worker', the Convention distinguishes three groups of workers. The first subgroup consists of migrant workers who have been sent by their employer for a restricted and defined time period to a State of employment to undertake a specific assignment or duty. The second subgroup consists of migrant workers who engage for a restricted and defined time period in work that requires professional, commercial, technical or other highly specialised skills. And finally, the group referred to as specified-employment worker includes migrant workers who, upon the request of their employer in the State of employment, engage for a restricted and defined period of time in work whose nature is transitory or brief and who are required to depart from the State of employment either at the expiration of their authorised period of stay, or earlier if they no longer undertake the specific assignment or duty or engage in the work that they were engaged for.[101] All the provisions of Part Four of the Convention shall apply to this category of migrant workers, except those provisions which provide for access to vocational guidance and placement services, access to vocational training and retraining facilities and institutions, and access to housing, including social housing schemes and protection against exploitation in respect of rents.[102] Additionally, provisions regulating the conditions and restrictions under which paid activities can be chosen in the country of employment,[103] as well as provisions guaranteeing national treatment to migrant workers in terms of access to alternative employment in the event of loss of work or termination of other remunerated activity[104] will not be applied in this category. As for the members of the families of migrant workers, they will have all the rights provided for in Part Four of the Convention (of course, those reserved for family members, not for migrant workers themselves), except for those provided for in Article 53, which regulates the possibility of carrying out remunerated activities.

The last category is the so-called self-employed worker, which refers to a migrant who is engaged in a remunerated activity not under a contract of employment and who earns his or her living through this activity normally working either alone or with members of his or her family, as well as to any other migrant worker recognised as self-employed by the applicable legislation of the State of employment or bilateral or multilateral agreements.[105] This kind of worker shall be entitled to the rights provided in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.[106]

101 Ibid., Art. 2 para. 2 item g.
102 Ibid., Art. 43 para. 1 items b–d.
103 Ibid., Art. 52.
104 Ibid., Art. 54 para. 1 item d.
105 Ibid., Art. 2 para. 2 item h.
106 Ibid., Art. 63 para. 1.

3.7. Part Six of the Convention

Part Six of the Convention is dedicated to promoting fair, equitable, humane and full conditions of the international migration of workers and members of their families,[107] without prejudice to the provision of Article 79 of the Convention, which stipulates that nothing in the Convention shall affect the right of each State Party to establish criteria for the admission of migrant workers and members of their families. This means, first of all, that when it comes to migrant workers and their families, due attention should be paid not only to the conditions and needs of work, but also to all other social, economic, cultural and other needs of these persons.[108] These objectives will be achieved, *inter alia*, by establishing appropriate services to deal with issues related to the international migration of workers and their families such as, for example, providing information on policies, laws and regulations relating to migration and employment, on relevant agreements that have been concluded, and providing information and appropriate assistance to these persons on the necessary permits concerning the departure, travel, arrival, residence, working and living conditions in the country of employment.[109]

When it comes to migrant workers who do not have a regular status, State Parties, including States of transit, shall collaborate with a view to prevent and eliminate illegal or clandestine movements and the employment of migrant workers in an irregular situation. The measures that states will take to this end are: measures against the dissemination of misleading information; measures to detect and eradicate illegal or clandestine movements of migrants and measures to impose effective sanctions on persons, groups or entities which organise, operate or assist in organising or operating such movements, as well as measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrants workers (and their families).[110] Also, States of employment will combat the employment of migrant workers who do not have a regular status, by eliminating employment and applying sanctions on employers of such workers.[111] The goal of all member states, when it comes to migrant workers with an irregular status, is the same – to strive to keep such a situation as short as possible.[112]

On the other hand, when it comes to migrant workers who have a regular status, the Convention imposes on member states the duty to treat such persons in the same way as nationals, and in terms of taking measures to ensure working and living conditions complying with standards of fitness, safety, health and principles of human dignity.[113]

107 Ibid., Art. 64 para. 1.
108 Ibid., Art. 64 para. 2.
109 Ibid., Art. 65.
110 Ibid., Art. 68 para. 1 items a–c.
111 Ibid., Art. 68 para. 2.
112 Ibid., Art. 69 para. 1.
113 Ibid., Art. 70.

4. Monitoring: The Committee on the Protection on the Rights of All Migrant Workers and Members of Their Families

4.1. Introduction

The Part seven of the Convention is entitled Implementation of the Convention. A special body was established to monitor the implementation of the Convention – the Committee on the Protection on the Rights of All Migrant Workers and Members of Their Families.[114] The members of the Committee are elected by the Member States themselves, by secret ballot, from a list of candidates proposed by the Member States themselves.[115] The Secretary-General of the United Nations shall ensure the necessary staff and conditions for the effective work of the Committee, whose members shall receive their remuneration directly from the United Nations.

4.2. Committee's Competence

4.2.1. Competence of the Committee with Regard to Reports Submitted by Member States

Article 73 of the Convention requires States Parties to submit to the Secretary-General of the United Nations reports on the legislative, judicial, administrative and other measures they have taken to put into force the provisions of the Convention. The reports submitted are considered by the Committee. There are two types of these reports: the first must be submitted within one year of the date of entry into force of the Convention for each State Party individually; within the second type of report, we can distinguish two sub-types of reports – the first sub-type consists of those reports that we could call 'regular' because they are regularly submitted every five years, while the second sub-type consists of those reports that could be called 'upon request' because they are obliged to be submitted by States Parties only at the request of the Committee. All these reports, provided for in the aforementioned Article 73 of the Convention, must contain two types of information: firstly the difficulties that exist in connection with the implementation of the Convention, if of course, there are any at all, and secondly, information on the characteristics of the migration flows in which the State Party, the reporting party, is involved. The Committee is obliged to consider each report received and if it considers it necessary for some reason, to send comments on the report to the reporting party, but possibly also to request additional information from it.[116]

Based on the analysis of all reports received during the period of a year, the Committee will prepare its report on the implementation of the Convention, which it will submit to the United Nations General Assembly.[117]

114 Ibid., Art. 72 para. 1 item a.
115 Ibid., Art. 72 para. 2 item a.
116 Ibid., Art. 74 para. 1.
117 Ibid., Art. 74 para. 7.

Requirements regarding the form and contents of initial reports are contained in The Provisional Guidelines regarding the form and contents of initial reports to be submitted by States parties under Article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.[118] While when writing the so-called periodic reports, the provisions of the Guidelines for the Periodic Reports to be submitted by States Parties under Article 73 of the Convention must be respected, in terms of form and content.[119]

Several problems may arise with regard to the prescribed obligation to submit the aforementioned obligations. Firstly, it is possible that individual states do not fulfil their obligation or at least do not fulfil them within the prescribed deadline. The second problem concerns the quality of the written reports, primarily in terms of content. This leads to the fact that individual states are thus subject to review by the Committee, unlike others that by not submitting reports, avoid this type of control by the Committee, or are controlled to a somewhat lesser extent due to the more modest content of the reports submitted.[120]

4.2.2. Competence of the Committee with Regard to Applications Submitted by Member States

In addition to its proficiency in considering reports from States Parties, the Committee also has the competence to receive and consider communications from States Parties in which the submitting State Party claims that another State Party is not fulfilling its obligations under the Convention.[121]

The condition for a State party to submit a complaint against another State party to the Committee is that it accepts this competence of the Committee, that is, it accepts that it too could be 'reported' for the violation of a provision of the Convention. However, the submission of a complaint to the Committee by a State party, in relation to the conduct of another State party, more precisely concerning its failure to fulfil the obligations undertaken by its ratification the Convention, is considered a last resort. In other words, the Convention prescribes a procedure, in the form of a sequence of steps, that must be followed before the complaint can be received and considered by the Committee. Namely, if one State party considers that another State party is not fulfilling its obligations under the Convention, it should first try to resolve the matter by addressing the specific State party in writing. Within three months of the date of receipt of the application by another State, the State receiving the application should send to the State sending the application an explanation regarding the matter in question, and any information regarding the domestic procedures and remedies that have

118 See: https://documents.un.org/doc/undoc/gen/g05/415/17/pdf/g0541517.pdf (Accessed: 10 June 2025).
119 See: https://documents.un.org/doc/undoc/gen/g08/421/36/pdf/g0842136.pdf (Accessed: 10 June 2025).
120 For more details: Chetail, 2020, pp. 601–644.
121 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 76 para. 1.

been or may be taken in relation to the specific case.[122] If the problem is not resolved at the level of direct communication between the two Member States, then either of the two Member States concerned shall have the right to refer the matter to the Committee within six months of receipt of the first application.[123] In addition to this prior direct communication between the two Member States, there is another condition that must be met in order for the Committee to consider a received application.[124] It is necessary that all domestic legal remedies would have been exhausted first.

The Committee shall consider all applications in closed sessions.[125] During these sessions it may invite the States Parties concerned to submit any relevant information.[126] The States Parties concerned shall also have the right to submit oral and written submissions during the consideration of the case by the Committee.[127] The Committee shall submit its report within twelve months of the receipt of the case.[128] The content and scope of the report shall depend on whether the case has been settled in a 'friendly' manner, as the text of the Convention itself states.[129] Therefore, if the case has been settled amicably between the two States Parties, with the assistance of the Committee and with a view to respecting all the obligations undertaken under the Convention, the Committee's report shall contain only a brief statement of the facts established and the solution reached.[130] Otherwise, the Committee shall set out in its report the relevant facts relating to the question between the States Parties, together with written evidence and records of the oral statements made by the representatives of the States Parties.[131]

4.2.3. The Committee's Competence over Individual Applications

The Committee also has jurisdiction to receive and consider communications from individuals who claim that one of their rights as guaranteed by the Convention has been violated by a State party. In order for the Committee to receive such a communication in the first place, it is necessary that the State within whose jurisdiction the applicant is located has declared that it accepts the Committee's jurisdiction to consider such communications.[132]

In order for the Committee to consider the aforementioned application, the following conditions must be met: firstly, that the same issue has not been the subject of another international investigation procedure,[133] and secondly, that the

122 Ibid., Art. 76 para. 1 item a.
123 Ibid., Art. 76 para. 1 item b.
124 Ibid., Art. 76 para. 1 item c.
125 Ibid., Art. 76 para. 1 item e.
126 Ibid., Art. 76 para. 1 item f.
127 Ibid., Art. 76 para. 1 item g.
128 Ibid., Art. 76 para. 1 item h.
129 Ibid., Art. 76 para. 1 item d.
130 Ibid., Art. 76 para. 1 item h, subpara i.
131 Ibid., Art. 76 para. 1 item h, subpara ii.
132 Ibid., Art. 77 para. 1.
133 Ibid., Art. 77 para. 3 item a.

individual submitting the application has first exhausted all available legal remedies before the authorities of his or her own State.[134] The Committee shall transmit any communication received from the State Party alleged to be violating the provisions of the Convention, which should have been submitted to the Committee within six months, explanations concerning the problem itself, and any remedies which might be available.[135] On the basis of an application submitted by an individual, the Committee will consider the case in closed sessions and address its views, based on all the information received from both the individual and the 'accused' Member State, to the individual and the Member State concerned.[136]

4.3. Development of the Committee's Functions

For the Committee on Migrant Workers, neither the inter-State communications procedure nor the individual complaint mechanism have yet entered into force. Article 76 gives the Committee competence to receive and consider communications by a State Party alleging violations of the Convention by other State Parties who had made the necessary declaration under article 76. But this inter-State complaint mechanism will become operative when ten States Parties have made the necessary declaration under article 76. Article 77 of the Convention gives the Committee the ability to receive and consider individual communications alleging violations of the Convention by States parties who had made the necessary declaration under article 77. Furthermore, this individual complaint mechanism will become operative when ten States Parties have made the necessary declaration under article 77.

In addition to the functions performed by the Committee with regards to the reports received from Member States, as well as the functions with regards to the applications submitted by Member States and individuals, another of its functions can be distinguished. It is true that it is not as clearly distinguished in the provisions of the Convention as the three functions described above. It concerns the adoption of general comments with the aim of interpreting the Convention.[137] This function arises from Article 74, paragraph 7 of the Convention, which provides that 'the Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examinations of the reports and any observations presented by States Parties'.

134 Ibid., Art. 77 para. 3 item b.
135 Ibid., Art. 77 para. 4.
136 Ibid., Art. 77 paras. 5–7.
137 For more details: Chetail, 2020, pp. 601–644.

5. Conclusion

We are free to conclude that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was created as a response to the perceived necessity of creating an appropriate normative framework functioning on an international level, with the aim of ensuring the effective protection of migrant workers and their families. In other words, there was a need to provide necessary protections to migrants who are employed in the territory of another country (i.e. one that is not the country of their origin) and enable them to exercise those rights that are guaranteed to domestic citizens as well.

Although it is obvious that the creators of the Convention were inspired by the standards of the International Labour Organization, and adopted a large number of principles contained in them, it can be noted that this Convention went a step further when it comes to the protection of this category of persons, namely, it covers and migrants with irregular status.

It is interesting that the adoption of the Convention was preceded by many years of discussions, reports and recommendations on the subject of migrants' rights, and that as early as 1972 the United Nations, for the first time, expressed open concern about the endangered rights of migrant workers, when the Economic and Social Council, within resolution 1706 (LIII), expressed alarm at the illegal transportation of labour to some European countries, and at the exploration of workers from some African countries in conditions that resembled that slavery and forced labour. It is even more interesting that the Convention entered into force only in 2003, that is, 13 years after its adoption by the General Assembly of the United Nations, since the condition for the Convention to enter into force was that it was ratified by twenty states. Because of the long road that was covered until the Convention entered into force, the prevailing opinion in the scientific and professional literature is that it represents a great success of the international community, since it is the result of the struggle to provide legal protection to millions of migrants, both *de jure* and without distinction in relation to their legal position.

However, if we take into account that the Convention was ratified by only 62 member states of the United Nations, which is less than one third of the members of the United Nations Organisation, the question arises as to how important it is *de facto* on the international scene. What is also noticeable is that this Convention was largely ratified by the member states of the United Nations, which represent the home states, i.e. the states from which migrant workers depart, while the states to which the largest number of migrant workers arrive, namely the United States of America, Canada, Australia, Russia, China, the United Kingdom, and all the member states of the European Union, have not ratified this document.

There are many possible reasons for not accepting the Convention. We will mention only some of them. Firstly, the obligation of the state that decides to ratify is that it must ratify the Convention in its entirety, which means that the state may not

exclude the application of any Part of it, or exclude any particular category of migrant workers from its application. Secondly, many states believe that the corresponding provisions violate the principle of state sovereignty and the exclusive right of each state to regulate the entry and stay of foreigners in their domestic territory, as well as the regime of their protection. Thirdly, migrants' rights are already dealt with by other international treaties. Fourth, the focus of this Convention is not on civil and political rights, but on social and economic rights, as the rights of the second generation of human rights, for the effective realisation of which significantly larger funds are required. Fifth, with regards to the member states of the European Union, membership of the EU is often cited as the reason for not accepting the Convention. Sixth, non-ratification of the Convention can also be interpreted as a purely political (or electoral) problem, because as foreigners, migrants are not citizens and (usually) cannot vote; ratification would then happen only in migrants' interests. Seventh, it is also stated that 'given the small number of states that have ratified the Convention, many countries fear to be among the first in their region to ratify it'; In the end, it could also be stated that the Convention is too detailed when it comes to the need to protect migrants and their family members, to the extent that it sometimes 'overdoes' the protection itself – either in terms of provisions that may not have been necessary, either in regard to the matter itself in which excessive protection is provided, it seems.

The information about the acceptance of the individual complaint's procedures under article 77 of the Convention is also devastating, bearing in mind that only seven member states of the Organisation of the United Nations accepted it, which did not enable single subjects to submit individual complaints to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. It would be of particular importance if a greater number of member states accepted these individual complaints procedures, which would certainly ensure a better and more effective protection of the rights of migrant workers and their family members.

Almost thirty-five years after the adoption of the Convention, the United Nations should undertake more serious activities, which would contribute to a greater number of ratifications of the Convention. It would be especially desirable if these activities were undertaken in receiving countries, such as the member states of the European Union, where in recent years there has been an increasing number of migrant workers, very often without regulated status. As another possible solution, the revision of the article of the Convention is proposed, which overlooks the obligation of the UN member state that accedes to ratification to ratify the entire text of the Convention without the possibility of selecting individual parts, as provided for by a large number of International Labor Organisation conventions. This would surely encourage individual countries to accede to the Convention, because they would have the opportunity to choose the parts that they would implement in their national legal systems without obstacle.

As a result of all the above, and in connection with the problem of the insufficient number of ratifications of the Convention, the views of the authors who consider this

international document as one of the most neglected treaties in international human rights law seem more than justified.

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