



# INTERNATIONAL LEGAL FRAMEWORK FOR REGULATING LABOR MIGRATION

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<p><b>Received:</b> November 24<sup>th</sup> 2022 <b>Accepted:</b> December 26<sup>th</sup> 2022 <b>Published:</b> January 30<sup>th</sup> 2023</p>	<p>The given paper analyzes the International standards for protecting migrant rights and proposes a system that can effectively protect the rights of migrant workers. The improvement of international instruments in the field of migration is extremely relevant for the entire world community, as countries are faced with migration flows of people with and without documents. There is also a need to adapt the institutional and legal framework governing labor migration to international standards in order to ensure better management of migration processes.</p> <p>The research is conducted on three main methods, i.e. online-library research and the analysis of national legislation and sources of international law in regulating migrant rights.</p>
<p><b>Keywords:</b> international migration, global standards, core-rights, universal rights, human rights, international legal protection.</p>	

Migration, due to the fact that it covers the broad masses and is a difficultly regulated process, has become an object of international legal regulation. The United Nations (hereinafter UN) and the International Labor Organization (hereinafter ILO) play the most significant role in regulating migration processes, as well as in ensuring the rights and freedoms of migrant workers. In particular, under the auspices of the United Nations, a number of acts were adopted aimed at protecting the rights and legitimate interests of those who carry out professional activities outside their country of origin<sup>1</sup>. A migrant is first and foremost a person, so here it is necessary to mention first of all the documents relating to human rights. These are the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966, which are the foundation and guarantor of human rights, but on the basis of which other documents are adopted. The whole system of international human rights law proceeds from the fact that all people, by virtue of their belonging to the human race, have certain rights<sup>2</sup>. This principle is enshrined in Article 2 (1) of the Universal Declaration of Human Rights, which states: "Every person shall have all the rights and all freedoms proclaimed by this Declaration, without distinction of any kind, such as

race, color skin, gender, language, religion, political or other opinions, national or social origin, property, estate or other status"

There is a similar provision in Article 2(1) of the International Covenant on Civil and Political Rights, where citizens and non-citizens do not differ in rights. A similar approach can be found in Article 4 of the International Covenant on Economic, Social and Cultural Rights, which recognizes a set of key rights that member states are obliged to guarantee to all persons at all times, regardless of citizenship status. Among other rights, Art. Article 6 of the Covenant grants everyone the right to work, while Article 7 recognizes everyone's right to just and favorable working conditions.

The Human Rights Committee in General Comment No. 15 gives the following explanation: "... the rights enshrined in the Covenant apply to all persons, regardless of the principle of reciprocity, their citizenship or lack thereof" (paragraph 1). And further: "... the general rule is that each of the rights established in the Covenant must be guaranteed without discrimination between citizens and foreigners" (para. 2)<sup>3</sup>.

The result of the ten-year work of a special working group of the UN General Assembly was the "International Convention on the Protection of the

<sup>1</sup> Prudnikova T.A. International legal framework for regulating external labor migration. Bulletin of economic security. 2019;(2):262-5.

<sup>2</sup> Shapkina A.Yu. International migration of workers: modern legal problems // Bulletin of Moscow University. Episode 11 2011.

<sup>3</sup> General Comment No. 15 of the Human Rights Committee on the situation of aliens in relation to the Covenant // CCPR/C/21/Rev. 1, 1986. 11.04; Weisbrodt D. The rights of non-citizens // Lawyer - international affairs. 2003. No. 1.



Rights of All Migrant Workers and Members of Their Families" of 1990. The Convention establishes that migrant workers and members of their families employed abroad constitute an unprotected part of the population, whose rights are often not enshrined in either the national legislation of the host country or their country of origin<sup>4</sup>.

Thus, the 1990 UN Convention enshrines the responsibility of host states in recognizing the rights of migrant workers and members of their families and ensuring their protection, and also lists civil, political, economic, social and cultural rights applicable to all migrant workers, regardless of their legal status. In addition, the convention provides additional rights for migrant workers and members of their families who have established documents or an appropriate status. These include: the right to free movement within the territory of the state of employment; to create associations and trade unions; to enjoy political rights in the State of employment (if it grants them such rights); access to education, housing, social services and health care, protection from dismissal, unemployment benefits on a par with citizens of the country.

The principle of equal treatment of migrant workers and nationals of the host country, other than the courts and before the judiciary, in the field of wages and other working conditions, as well as in the field of access of migrant workers to emergency medical care and the education of children of migrant workers is enshrined in Articles 18(1) , 25, 28 and 30 of the Convention<sup>5</sup>.

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was approved as a supervisory body in accordance with the provisions of the UN Convention. This body is authorized to consider reports on legislative, judicial, administrative and other measures taken by States parties to implement the provisions of the Convention (Articles 72-73). According to the Convention, its participants can at any time recognize the competence of the Committee to receive and consider interstate complaints about non-compliance with its provisions (Article 76), as well as recognize the competence of the Committee to receive and consider individual complaints about violations of the personal rights of migrant workers, which are enshrined in the Convention (Article 77). This body has been operating since 2004 and has considered a number of reports from participating

States. But as V.A. Kartashkin rightly noted, "its activities are still not effective enough, since many developed countries, in which millions of migrant workers work, have not ratified the Convention under consideration"<sup>6</sup>. In addition, until today, the competence of the Committee to consider individual complaints has not been recognized by any state.

And now let's move on to the direct consideration of the activities of the ILO, which puts the protection of the interests of workers, employed migrants in foreign countries, one of the main tasks enshrined in its charter. From the very beginning of its existence, one of the main goals was, first of all, the definition and protection of the rights of migrant workers and the improvement of their situation. And the ILO carries out its activities by developing international labor standards in the form of conventions and recommendations, contributing to their recognition and observance in practice. Even at the 1st session of the General Conference of the ILO in 1919, Recommendation No. 2 "On reciprocity in the field of relations with foreign workers" was adopted. Today, the ILO is calling on the international community to develop policies and resources to improve the management of labor migration so that it benefits both sending and receiving countries, as well as the well-being of migrant workers themselves and their families.

It is necessary to single out a special group of conventions and recommendations adopted by the ILO to regulate labor migration, including the ILO Convention No. 97 on migrant workers of 1949, which is fundamental in the field of legal regulation of labor migration. The Convention provides that ILO participating States undertake to accord, without discrimination on grounds of nationality, race, religion or sex, to immigrants lawfully present in their territory, conditions no less favorable than those enjoyed by their own nationals in respect of such matters. such as wages, hours of work, holidays with pay, union membership and benefits from collective bargaining agreements, housing, social security, litigation<sup>7</sup>. In addition, Convention No. 97 defines the rules for recruitment, employment and movement to the country of employment; the rights of migrant workers in the field of conditions and wages, taxation, transfer of personal savings, etc. are defined.

Many authors are convinced that the provisions of the Convention provide for a "comprehensive legal mechanism for regulating labor migration" and, if they

<sup>4</sup> This Convention entered into force on July 1, 2003 (Collection of international legal documents governing migration issues, p. 161).

<sup>5</sup> There. P. 162

<sup>6</sup> Kartashkin VA. Human Rights: International Protection in the Context of Globalization. M., 2009. S. 275.

<sup>7</sup> Sat. international legal instruments regulating migration issues. M., 1994.



were ratified by all states participating in international labor migration, the issues of the rights of migrants and members of their families, discrimination of migrant workers, illegal migration would not be so acute, being a pressing problem. However, most of the states that have ratified the Convention are exporters of labor, while importing states do not want to be bound by the stringent legal obligations that accession to the Convention entails.<sup>8</sup>

Convention No. 97 calls for the conclusion of bilateral agreements to regulate migration issues, applying the norms of the convention. For this purpose, it is proposed to use the model agreement contained in Recommendation No. 8611, which is an addendum to the Convention. This model agreement covers many aspects of migration and provides examples of the content of model employment contracts. To ensure a high level of protection for migrant workers, as stated in the convention, bilateral agreements are an effective means.

While the adoption of the 1949 Convention was motivated by a desire to facilitate the movement of surplus labor from states with a surplus to countries with a shortage of labor, in the following decades, states became concerned about unemployment and the growth of unregulated migrations. There has been a shift in focus from facilitating the movement of surplus labor to controlling migration flows. The result of the changed migration situation in the world was the adoption by the ILO in 1975 of the Convention No. 143 on Abuses in the Field of Migration and on Ensuring Equality of Opportunity and Treatment for Migrant Workers<sup>9</sup>. This convention can be described as the first step of states in the fight against illegal labor migration at the international level, in contrast to Convention No. 97, the main task of which was to regulate legal labor migration 143 considers the situation of illegal migrants too. In accordance with the provisions of the Convention, member states must identify illegal migration on their territory and take the necessary measures to reduce it (Art. 2.3). This international legal document provides for the need to apply sanctions against organizers of the illegal or secret movement of migrants, as well as against the illegal use of the labor of migrant workers (Article 6).

Convention No. 143, together with the right to equal treatment, also states that migrant workers not only must have the right to equal treatment, it also

provides for equality in access to employment, trade union rights, cultural rights and personal and collective freedoms.

Convention No. 143, as well as Convention No. 97, does not apply to seafarers, workers in frontier areas, persons of "free professions" and "artists" who have entered for a short time. Also, the provisions of the convention do not apply to trainees and apprentices, as well as employees temporarily hired to perform specific jobs or tasks.

As P. Stoker notes, the International Labor Organization Convention No. 97 "On Migrant Workers" and the International Labor Organization Convention No. 143 "On Abuses in the Field of Migration and Ensuring Equality of Opportunity and Treatment for Migrant Workers" determine the minimum level of treatment that should be provided for migrant workers<sup>10</sup>.

In addition to the above-mentioned conventions, the ILO has developed other instruments that cover fundamental principles and rights in the world of work.

The 1998 Declaration on Fundamental Principles and Rights at Work and the Mechanism for its Implementation establishes that all Member States of the ILO have an obligation, arising from the very fact of their membership in the Organization, to respect the four categories of principles and rights at work, even if they have not yet ratified the conventions on these principles and rights. These include: freedom of association and effective recognition of the right to collective bargaining; the abolition of all forms of forced or compulsory labor; effective abolition of child labour; non-admission of discrimination in the field of work and occupation. Fundamental principles and rights at work are universal and apply to all people in all nations. Consequently, they apply to all migrant workers without exception, whether they are temporary or permanent migrants, legal or illegal migrants.

The provisions of the 1997 Private Employment Agencies Convention No. 181 also apply to migrant workers. It contains important provisions aimed at preventing migrant workers from being mistreated in relation to recruitment and employment through private employment agencies. In particular, it is indicated that the recruitment of migrant workers should be free of charge, while certain exceptions are allowed for certain categories of workers and special types of services.

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<sup>8</sup> MARTIN RUHS, *The Rights of Migrant Workers: Economics, Politics and Ethics*, 155 *int'l lab. rev.* 281 (2016).

<sup>9</sup>Yudina T.N. *Sociology of migration: towards the formation of a new scientific direction*. M., 2003. S. 311 - 320.

<sup>10</sup> Stoker, P. *Foreign Work: An Overview of International Labor Migration*. M., 1995. S. 78.



However, the ratification by the member states of the 1990 UN Convention and the ILO on migrant workers is disappointing. As of July 2019, a total of 51 States have ratified the 1990 Convention. The Convention is the least ratified among all the core human rights treaties.

The few countries that have ratified the 1990 Convention are predominantly sending states rather than receiving migrants. These are all low- or middle-income countries, three-quarters of which have a low or medium development index. An equally small number of countries have ratified ILO Convention No. 97 (49 countries) and even fewer ILO Convention No. 143 (23 countries).

Among the main reasons for such a low ratification of these conventions, first of all, there is an economic factor, namely the lack of resources for the implementation of the provisions of the Convention, as well as the impossibility of ensuring the principle of equal treatment for migrant workers legally staying and working in the state, and citizens of this state, which is one of the main requirements of the UN Convention<sup>11</sup>.

Thus, in conclusion, it should be noted that at the global level, the rights of migrant workers are not widely documented, being enshrined in many international legal acts, however, due to low ratification by members of the international community, the effectiveness of global migration norms in protecting workers -migrants are extremely limited.

Summing up the analysis of international legal acts protecting the rights of labor migrants, it should be noted that they are divided into documents of a general nature, documents of a special nature, which are approved by the ILO. The latter, in turn, can be divided into mandatory and recommendatory.

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<sup>11</sup> MARTIN RUHS, The Price of Rights:

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