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C143 - Convenio sobre los trabajadores migrantes (disposiciones complementarias), 1975 (núm. 143)

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Preámbulo

La Conferencia General de la Organización Internacional del Trabajo,

Convocada en Ginebra por el Consejo de Administración de la Oficina Internacional del Trabajo, y congregada en dicha ciudad el 4 de junio de 1975 en su sexagésima reunión;

Considerando que el Preámbulo de la Constitución de la Organización Internacional del Trabajo le asigna la misión de proteger "los intereses de los trabajadores cuando están empleados en países distintos del suyo", y

Considerando que la Declaración de Filadelfia reafirma, entre los principios en que se basa la Organización, que «el trabajo no es una mercancía» y que «la pobreza, en cualquier lugar, constituye un peligro para la prosperidad de todos», y reconoce la solemne obligación de la OIT de promover programas que permitan lograr, en particular, el pleno empleo mediante «la transferencia de mano de obra, incluso para el empleo...»,

Considerando el Programa Mundial del Empleo de la OIT y el Convenio y la Recomendación sobre la política del empleo, 1964, y destacando la necesidad de evitar el aumento excesivo e incontrolado o sin asistencia de los movimientos migratorios debido a sus consecuencias sociales y humanas negativas, y

Considerando que, para superar el subdesarrollo y el desempleo estructural y crónico, los gobiernos de muchos países insisten cada vez más en la conveniencia de estimular la transferencia de capital y de tecnología más bien que la transferencia de trabajadores, de conformidad con las necesidades y demandas de esos países, en interés recíproco de los países de origen y de los países de empleo, y

Considerando el derecho de toda persona a salir de cualquier país, incluso del propio, y a entrar en su propio país, tal como se establece en la Declaración Universal de Derechos Humanos y en el Pacto Internacional de Derechos Civiles y Políticos, y

Recordando las disposiciones contenidas en el Convenio y la Recomendación sobre los trabajadores migrantes (revisados), 1949; en la Recomendación sobre la protección de los trabajadores migrantes (países insuficientemente desarrollados), 1955; en el Convenio y la Recomendación sobre la política del empleo, 1964; en el Convenio y la Recomendación sobre el servicio del empleo, 1948; y en el Convenio sobre las agencias retribuidas de colocación (revisado), 1949, que tratan de cuestiones tales como la reglamentación del reclutamiento, la introducción y la colocación de los trabajadores migrantes; el suministro de información precisa sobre la migración; las condiciones mínimas de que deben gozar los migrantes en tránsito y a su llegada; la adopción de una política activa de empleo y la colaboración internacional en estas cuestiones; y

Considerando que la migración de trabajadores debida a las condiciones de los mercados de trabajo debería tener lugar bajo la responsabilidad de los organismos oficiales de empleo o de conformidad con los acuerdos bilaterales o multilaterales pertinentes, en particular los que permiten la libre circulación de los trabajadores, y

Considerando que la evidencia de la existencia de tráfico ilícito y clandestino de mano de obra exige normas adicionales dirigidas específicamente a eliminar estos abusos, y

Recordando las disposiciones del Convenio sobre los trabajadores migrantes (revisado), 1949, que exigen que los Miembros ratificantes apliquen a los inmigrantes que se encuentren legalmente en su territorio un trato no menos favorable que el que apliquen a sus nacionales respecto de una variedad de materias que en él se enumeran, en la medida en que éstas estén reglamentadas por leyes o reglamentos o sujetas al control de autoridades administrativas, y

Recordando que la definición del término "discriminación" que figura en el Convenio sobre la discriminación (empleo y ocupación), 1958, no incluye obligatoriamente distinciones basadas en la nacionalidad, y

Considerando que es conveniente establecer normas adicionales, que abarquen también la seguridad social, para promover la igualdad de oportunidades y de trato de los trabajadores migrantes y, en lo que respecta a las cuestiones reguladas por leyes o reglamentos o sujetas al control de las autoridades administrativas, garantizar un trato por lo menos igual al de los nacionales, y

Tomando nota de que, para el pleno éxito de las medidas relativas a los muy variados problemas de los trabajadores migrantes, es esencial que haya una estrecha cooperación con las Naciones Unidas y otros organismos especializados, y

Tomando nota de que, al elaborar las siguientes normas, se ha tenido en cuenta la labor de las Naciones Unidas y de otros organismos especializados y que, con miras a evitar la duplicación y asegurar una coordinación adecuada, habrá una cooperación constante para promover y asegurar la aplicación de las normas, y

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention supplementing the Migration for Employment Convention (Revised), 1949, and the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five the following Convention, which may be cited as the Migrant Workers (Supplementary Provisions) Convention, 1975:

PART I. MIGRATIONS IN ABUSIVE CONDITIONS

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members--

(a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and

(b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions,

in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

3. In case of expulsion of the worker or his family, the cost shall not be borne by them.

4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

PART II. EQUALITY OF OPPORTUNITY AND TREATMENT

Article 10

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.

Article 11

1. For the purpose of this Part of this Convention, the term **migrant worker** means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.
2. This Part of this Convention does not apply to--
 - (a) frontier workers;
 - (b) artistes and members of the liberal professions who have entered the country on a short-term basis;
 - (c) seamen;
 - (d) persons coming specifically for purposes of training or education;
 - (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

Article 12

Each Member shall, by methods appropriate to national conditions and practice--

- (a) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in Article 10 of this Convention;
- (b) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;
- (d) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (e) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment;
- (f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue;
- (g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

Article 13

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.
2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

Article 14

A Member may--

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

PART III FINAL PROVISIONS

Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

Article 16

1. 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.
2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.
3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate in its reports upon the application of this Convention the position of its law and practice in regard to the provisions of the Part excluded from its acceptance, the extent to which effect has been given, or is proposed to be given, to the said provision and the reasons for which it has not yet included them in its acceptance of the Convention.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of

denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

Las versiones inglesa y francesa del texto de esta Convención son igualmente auténticas.

Ver relacionados
Información clave
<div>Convención sobre las Migraciones en Condiciones Abusivas y la Promoción de la Igualdad de Oportunidades y de Trato de los Trabajadores Migrantes (Entrada en vigor: 9 de diciembre de 1978)</div> <div>Adopción: Ginebra, 60.ª sesión de la CDI (24 de junio de 1975).</div> <div>Estado: Instrumento actualizado (Convención Técnica).</div> <div>La Convención puede ser denunciada: 9 de diciembre de 2028 - 9 de diciembre de 2029.</div>
Véase también
<div>Ratificaciones por país</div> <div>Presentaciones a las autoridades competentes por país</div>