

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE COUNTRY

MIGRANTS, REFUGEES AND ASYLUM SEEKERS

Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (103.1, 103.2, 103.3, 103.4)

1. Giving the Belgian state structure, ratification requires the involvement of different competent governments. Therefore, ratification and application of the Convention requires coordinated efforts by the different governments. However, governments gave given different statements on the ratification of the Convention. Whereas the Flemish Government decided in 2004 to officially support a Belgian ratification of the Convention, the position of the federal government is not that straightforward. In 2004, the Minister of Foreign Affairs stated that legal obstacles remained and therefore consensus among the different competent institutions could not be reached. In 2005, the Minister of Labor gave a similar answer. In 2007, the Minister of Foreign Affairs stated that ratification would not be possible due to contradictions with internal law and because ratification of the Convention touches upon the shared competence of the EU and its Member States and therefore coordination at the European level is necessary. In 2008 the former Belgian Minister of Migration and Asylum, expressed the willingness to reopen the issue of ratifying the Convention and said that she did not a priori see any insurmountable obstacles for ratification. She also expressed the wish to discuss ratification with her EU colleagues and stated that the reasons for which the ratification process is temporarily blocked by host countries – including countries outside the EU - must be studied. However in its UPR of 2011 Belgium indicated that, like the other EU members, it is not in a position to consider becoming party to the Convention.
2. However, a study on the legal consequences of a possible ratification on national legislation (2003, carried out by independent experts¹), revealed that the Belgium legislative framework is mostly in line with the Convention.
3. In 1994 the European Commission issued a communication in which she encouraged Member States to ratify the Convention, by stating that ratification would give a practical expression to the goals to define minimum standards in the action against irregular migration, as well as the protection of the rights of third country nationals that legally reside in the Community. However, this position changed through time. In 2013, in a

¹ On the consequences of the Migrant Workers Convention of 18 decembre 1990 in case of ratification by Belgium see : Vanheule Dirk, Foblets Marie-Claire, Loones S., Bouckaert S.. *De betekenis van de VN-Arbeidsmigrantenconventie van 18 december 1990 in het geval van ratificatie door België*, Journal des tribunaux du travail - issn 0778-9009-20(2004),p. 341-358 available in dutch only on <http://hdl.handle.net/10067/489340151162165141>.

communication² the Commission states that the insufficient distinction in the Convention between the economic and social rights of regular and irregular migrant workers is not in line with national and EU policies, and has therefore become a fundamental obstacle. However, when it comes to substance, EU instruments provide far reaching protection for both regular and irregular migrants, and safeguards that are often broader than those provided by the Convention. In the longer term, there may be scope for reviewing the current composite normative framework, including the option of working towards a new convention that addresses the rights of all migrant workers, adapted to the realities and challenges of the 21st century.

4. Contrary to the European Commission, the European Parliament has consistently encouraged Member States to ratify the Convention, expressed through several resolutions. Close to the 20th anniversary of the Convention, in December 2010, the LIBE Committee adopted a motion calling on the EU Member States to sign and ratify the core conventions of the Council of Europe and the UN human rights instruments, including the UN Convention on Migrant Workers.
5. The Migrant Workers Convention is one of the “core” human rights international instruments. It may be not ratified, it possesses specific added value. It offers a comprehensive framework for the whole migration trajectory of the migrant workers and its family. Its personal scope of application is broader than that of other international instrument related to work migration (it includes borders workers, door-to-door salesmen, independent workers, ad hoc project workers). The Convention expects from every State party a benchmarking of the impact of national policies on the migrant workers and their families. The Convention provides for a better protection of irregular migrant workers (a group very vulnerable to discrimination and facing a high threshold to access the rights foreseen in other human rights instruments). The ratification of the Convention would be a strong statement towards international recognition of the rights of all migrant workers, a pledge towards discouraging the abuses and exploitation.

Recommandation

6. Re-open the discussions at national and European level to make an actual assessment of the pro's and contra's towards the ratification of the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

² Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Maximising the Development Impact of Migration, The EU contribution for the UN High-level Dialogue and next steps towards broadening, the development-migration nexus, COM(2013) 292 final.