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Explanatory Report to the European Convention on the Legal Status of Migrant Workers

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I. The European Convention on the Legal Status of Migrant Workers, drawn up within the Council of Europe by a Joint Committee consisting of members of the Special Representative's Advisory Committee and members of the Social Committee, was opened to signature by the member States of the Council of Europe on 24 November 1977.

II. The text of the explanatory report, prepared on the basis of a draft of the Joint Committee as amended and completed by the Secretariat and by a group of experts before being submitted to the Committee of Ministers of the Council of Europe, does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such nature as to facilitate the understanding of the provisions contained therein.

General remarks

1. The European Convention on the Legal Status of Migrant Workers was included by the Committee of Ministers in the Council of Europe's Work Programme for 1966. Its drafting was entrusted to a Joint Committee comprising nine members of the Special Representative's Advisory Committee and nine members of the Social Committee, chaired by the Council of Europe's Special Representative for National Refugees and Over-Population, Mr Pierre Schneiter. Representatives of the International Labour Office, the Organisation for Economic Co-operation and Development and the Commission of the European Communities took part as observers in the Joint Committee's work from its second meeting onwards.

2. The Joint Committee held eleven meetings between 10 July 1967 and 17 March 1971. In the course of its work it took advice, as instructed by the Committee of Ministers, from the International Organisation of Employers in Geneva, the World Confederation of Labour and the International Confederation of Free Trade Unions.

3. In 1971, at the request of the Committee of Ministers, the Consultative Assembly gave its views on the draft Convention in Opinion No. 56. On the basis of this important opinion the Joint Committee made a number of changes to the draft Convention.

4. The draft was referred to the Committee of Ministers in May 1971. In order to finalise the text the Committee of Ministers had to reach agreement on certain options of first importance, including:

- the possible application of the Convention to seasonal workers;

- the determination of the States having the right to become Contracting Parties to the Convention;

- the system for the acceptance of the undertakings contained in the Convention;

- the machinery provided for implementing and revising the Convention.

5. These various questions were resolved by means of the provisions of Article 1, paragraph 2.*e*, Article 34, Article 36 and Article 33 respectively, on the basis in particular of enquiries made by the Secretariat in the capitals of several States concerned.

6. The Convention was adopted in May 1977; it was decided to open it for signature by Council of Europe member States on 24 November 1977.

7. As stated in the preamble, the Convention seeks directly to serve the Council of Europe's aim of safeguarding and furthering human rights and fundamental freedoms, as embodied in the Convention on Human Rights and expounded by the European Court and Commission of Human Rights. It is also in keeping with the Council of Europe Conventions and Agreements in the social field, particularly the European Social Charter.

The aim and purpose of the Convention is to regulate the legal status of migrant workers so as to ensure that as far as possible they are treated at least equally with national workers as regards living and working conditions and to promote the social advancement and well- being of migrant workers and members of their families.

8. The Convention accordingly forms a framework agreement dealing with the most important aspects of migrant workers' legal status, but without attempting to regulate in detail all those aspects. For this reason, the Convention frequently refers to the provisions of domestic legislation or of the various bilateral or multilateral international instruments applying between Contracting Parties.

9. This also explains why it was found necessary to make the provisions of the Convention as effective as possible and to provide for their progressive future adjustment in the light of developments in the economic and social situation in Europe. That is why Article 33 of the Convention provides for the establishment of a Consultative Committee and lays down rules for its organisation and operation.

10. The authors of the Convention have taken fully into account agreements concluded elsewhere covering the same categories of persons, particularly those concluded in the European Economic Community and ILO. The Convention's relationship to other provisions of national or international law is dealt with in Articles 31 and 32 in such a way that migrant workers and their families will benefit from whichever of these texts is the most favourable.

Furthermore, it should be pointed out that the implementation of the Convention does not depend on reciprocity.

11. More detailed comments on the individual provisions of the Convention are set out below.

Commentary on the provisions of the Convention

CHAPTER I

Article 1 – Definition

12. Article 1 specifies the categories of persons to which the Convention applies and those to which it does not apply.

13. The definition of "migrant worker" in paragraph 1 indicates that the Convention applies only to nationals of a Contracting Party who have been authorised to reside in the territory of another Contracting Party in order to take up paid employment. In addition, as the Convention is not open to accession by non-member States of the Council of Europe, it will apply only to

migrant workers who are nationals of a Council of Europe member State which is a Contracting Party to the Convention.

In this connection, it was stated that Article 1, paragraph 1, does not cover former students staying on in a country to seek work, unless they have been authorised to reside in that country in order to take up paid employment.

14. There are excluded from the application of the Convention, by virtue of paragraph 2:

- frontier workers. According to the Joint Committee's definition, this means nationals of one member State who, while retaining their residence in the frontier area of their home country, to which they normally return every day, go to work in the frontier area of a neighbouring member State;

- artists, other entertainers and sportsmen engaged for short periods and members of a liberal profession;

- seamen;

- persons undergoing training. It should be emphasised that this term was used by the Joint Committee in a broad sense, covering not only persons receiving basic vocational training but, in general, nationals of one Contracting Party travelling to the territory of another Contracting Party for a definite period to improve their command of its language and commercial or occupational practice, including young people engaged au pair. The fact that the purpose of their visit is self-improvement need not prevent them from holding paid jobs in industry or business in so far as they do actual work for the firm where they are receiving training;

- seasonal workers: it follows from the definition adopted that the Convention is inapplicable only in cases where the activity engaged in by the migrant worker – whether he is employed in a "specified" paid activity or on the basis of a contract for a specified period – is objectively dependent on the rhythm of the seasons. Thus the dependence of the worker's activity on the rhythm of the seasons on the one hand, and the legal character of the contract – for a specified period – or the "specified" character of the activity on the other hand, are cumulative conditions. It follows that where a "specified" employment or a contract for a specified period relate to an activity which is not dependent on the rhythm of the seasons, the Convention remains applicable, subject to the provisions of Article 1, paragraph 2.*f*;

- workers who are nationals of a Contracting Party carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside of the territory of that latter Contracting Party.

CHAPTER II

Article 2 – Forms of recruitment

15. Article 2 deals with the recruitment of migrant workers under general or particular labour recruitment agreements. "Unnamed" recruitment (of individuals or groups) covers cases where labour is recruited on the basis of offers of employment for which anyone with the required qualifications may apply. "Named" recruitment covers all cases where workers are recruited by name at the request of employers in the receiving State or directly by them.

16. It was made clear that the first part of paragraph 1 allows an option as regards recruitment procedure.

It was thought, in particular, that an obligation to submit both "named" and "unnamed" applications through the intermediary of an official authority would probably result in excessive rigidity; for example, it would prevent a former student who had completed his studies in the territory of the receiving State from applying for a job there without going through an official body; for that reason, this system was not adopted.

Furthermore, it may be seen from the second part of the sentence that the possibility of setting up official recruitment bodies is left to the discretion of individual States, in the light of their national legislation or the international agreements to which they are parties. It was agreed that, for the purpose of applying this provision, the official bodies are those responsible for carrying out the operations of recruitment, introduction and placing under the law of the State where they take place or under agreements between the States concerned.

17. The provisions of Article 2 do not prevent a Contracting Party from adopting, with regard to work offered to unnamed persons and within the framework of a comprehensive development policy, measures which affect the volume or quality of labour required in relation to the national employment situation.

Article 3 – Medical examination and vocational test

18. Article 3 specifies the measures which may be taken in connection with selection procedures to provide for medical examinations and vocational tests for migrant workers at the time of recruitment. It lays down the right of receiving bodies to organise such examinations and tests.

Paragraph 1

19. It was agreed that, as a general rule, any medical examination should take place in the State of origin.

Paragraph 2

20. The provisions of this paragraph were adopted with the interests of both the migrant worker and the receiving State in mind. The medical examination and vocational test are intended to establish whether the migrant worker is physically and mentally fit and technically qualified for the job offered to him and to make certain that his state of health does not endanger public health. It was made clear that this provision must be read in conjunction with Article 4 and Article 9, paragraph 5.b, of the Convention.

21. It follows from these provisions when read together, that a person who has satisfactorily undergone a medical examination prior to recruitment (Article 3, paragraph 1) could nevertheless be refused entry to the territory of the receiving State by the immigration authorities on public health grounds if, for example, he were suffering from a contagious disease (Article 4, paragraph 2, of the Convention).

22. For humanitarian reasons it has been acknowledged that should a second medical examination be carried out at the request of the employer immediately after entry, a negative result could not in itself be grounds for sending the worker back to his own country, but he should be offered work compatible with his state of health or asked to undergo the necessary medical treatment.

Article 4 – Right of exit – Right to admission – Administrative formalities

23. By reason of its importance, it is not possible to make reservations under Article 36 in respect of this Article.

24. Under Article 4, each Contracting Party guarantees to migrant workers:

- the right to leave the territory of the Contracting Party of which they are nationals;

- the right to admission to the territory of a Contracting Party in order to take up paid employment after being authorised to do so and obtaining the necessary papers.

The right to leave the territory of a Contracting Party, as guaranteed under the Convention, is in accordance with the provisions of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2, paragraph 2, of which provides that "everyone shall be free to leave any country, including his own" and Article 18, paragraph 4, of the European Social Charter, which recognises "the right (of nationals of a Contracting Party) to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties".

Regarding the right of admission, the papers which a migrant worker must obtain prior to entry include the residence permit and the work permit, together with any other administrative papers required by the receiving State. As is the case for other provisions of the Convention, it goes without saying that the rights mentioned in this provision may be refused for failure to comply with a substantial condition for the issue or validity of the relevant documents.

25. It was agreed that this Article concerns only the first admission to the territory of the Contracting Parties and hence does not prejudge each Party's right under its own legislation to refuse readmission to a worker who, having left its territory, no longer satisfies the conditions for entitlement to employment and residence.

26. These two rights remain subject to limitations prescribed by national legislation and which are necessary for the protection of national security, public order, public health and morals (cf. in particular paragraph 21 above).

27. Under paragraph 3 of Article 4, the Contracting Parties undertake to issue the papers required for immigration and emigration as expeditiously as possible, free of charge or on payment of an amount not exceeding their administrative cost, that is to say the charge normally made by a national government department for the issue of such official documents.

Article 5 – Formalities and procedure relating to the work contract

28. This article was included in the Convention because it was thought desirable that the migrant worker should not take the decision to emigrate without full knowledge of the terms of his contract. Accordingly, Article 5 specifies that he must be provided, prior to departure for the receiving State, with a contract of employment or a definite offer of employment, either of which may be drawn up in one or more of the languages in use in the State of origin and in one or more of the languages in use in the receiving State, the use of at least one language of the State of origin and one language of the receiving State being compulsory only in the case of group recruitment by an official body.

29. It should also be noted in this connection that the Convention does not require the Parties to draw up any contract of employment in writing, thereby taking into account that some national legislations and international agreements do not provide for such an obligation.

Article 6 – Information

30. Article 6 supplements the provisions of Article 5 and is also intended to enable prospective emigrants to take their decision to emigrate in full knowledge of the facts. For this purpose, the Contracting Parties must co-operate in providing migrant workers with information, particularly regarding residence and employment conditions in the receiving State.

31. In the case of recruitment through an official body in the receiving State information must be provided before the worker's departure in a language he can understand. It was agreed that arrangements for the translation of such information, which is generally provided by the State of origin, would be dealt with in agreements between the States concerned.

Article 7 – Travel

Paragraph 1

32. This provision concerns the payment of the cost of travel to the receiving State in the case of group recruitment by official agencies; arrangements for covering such costs, which may on no account be charged to the migrant worker, will be dealt with in bilateral agreements.

Paragraph 2

33. It was made clear that the purpose of this provision is primarily humanitarian and that the measures to betaken under it by the relevant authorities do not include any obligation to provide financial assistance for the persons concerned. It was also stipulated that for the purpose of the implementation of this provision persons travelling individually with their families would have to approach the competent authorities and inform them of the difficulties likely to arise, so that those authorities might make appropriate arrangements. In addition, in exceptional circumstances, as in the case of a large influx of workers, the obligation to take "all steps" should be interpreted in the light of the exceptional nature of those circumstances.

Paragraph 3

34. This provision specifies the extent of exemptions from import taxes and duties granted under the Convention at the time of entry into the receiving State, final return to the State of origin and during transit. The text states the principle of total exemption in respect of the personal effects and property mentioned under a and of an exemption limited to what is reasonable in the case of the hand tools and portable equipment necessary for the exercise of the occupation mentioned under b. It is further provided that the practical application of this principle will depend on the legislation or regulations in force in the States concerned.

CHAPTER III

Article 8 – Work permit

35. By reason of its crucial importance to the Convention as a whole, no reservations may be made under Article 36 in respect of this article.

Paragraph 1

36. Paragraph 1 requires Contracting Parties allowing migrants to enter their territory to take up paid employment to issue or renew work permits for them (unless they are exempt from this requirement), subject to the conditions laid down in their legislation. This wording is intended to indicate that the employer is authorised to employ the worker and that the worker is authorised to engage in paid employment with the employer.

Paragraph 2

37. This provision must be read in conjunction with Article 9. paragraph 2, first and second sentences, which provide that the residence permit shall be issued and if necessary renewed as a general rule for a period of at least as long as that of the work permit and that where the work permit is valid indefinitely, the residence permit shall as a rule be issued and, if necessary, renewed for a period of at least one year. Article 8, paragraph 2, gives no further indications concerning the duration of the initial work permit, while Article 8, paragraph 3,

stipulates that in case of renewal the work permit should as a general rule be valid for at least one year.

Paragraph 2 also provides that the initial work permit may not as a rule bind the worker to the same employer or the same locality for a period longer than one year; it was decided not to stipulate in this provision the conditions to be complied with by a worker wishing to change his job during the period of validity of the initial work permit. In the case of a federal State, this matter could only be dealt with on the basis of the institutional structures of that State.

Similarly, it was agreed that a work permit may be withdrawn on grounds of failure to comply with a substantial condition for its issue or its validity.

Paragraph 3

38. The purpose of the rule contained in paragraph 3 is to stipulate that work permits should be renewed for a period of at least one year, but in the interest of the migrant worker whose work permit could be renewed, without absolutely ruling out the possibility of renewals for shorter periods, for it might not always be in his interest if the alternative were between renewing it for at least one year or not renewing it at all.

Article 9 – Residence permit

39. By reason of its crucial importance to the Convention as a whole, no reservations may be made under Article 36 in respect of this article.

Paragraph 1

40. The purpose of this provision is to establish an obligation to issue residence permits to migrant workers who have been authorised to take up paid employment in the territory of the receiving State under the conditions laid down in the Convention, particularly in Article 4, paragraphs 2 and 3. Paragraph 3 makes provision for the issue of residence permits also in respect of members of the migrant worker's family authorised to join him by virtue of the Convention.

The question of renewal of the residence permit is not dealt with in this paragraph of Article 9.

Paragraph 2

41. This provision concerns the period for which the residence permit will normally be issued and, if necessary, renewed; no fixed period for the residence permit is laid down in this provision but it is provided that the residence permit will be issued and, if necessary, renewed for a period, as a general rule, of the same length as the work permit; when the work permit is valid indefinitely, the residence permit will be issued and, if necessary, renewed for a period of at least one year.

As regards the period of validity of the residence permit, the provisions of paragraphs 4 and 5 of this Article should also be taken into account.

Paragraph 4

42. It was thought necessary that a migrant worker no longer in employment should be allowed to remain in the territory of the receiving State to find fresh work, in accordance with Article 25, for a period of not less than five months.

43. It is pointed out that this provision does not compel any Contracting Party to permit a migrant worker to remain for longer than the period during which, under its legislation, unemployment benefit is paid. This formula has been chosen because, at the present time, the period of payment of unemployment benefit varies substantially from one State to another.

Paragraph 5

44. This provision lists the only grounds on which a residence permit may be withdrawn before its normal expiry and specifies the remedies available to a worker against such withdrawal.

45. The question of renewal of residence permits is not dealt with in this article.

46. A residence permit cannot be withdrawn under Article 9 for public health reasons. having regard to the rules on this point already set out in Articles 3 and 4 of the Convention. Only in the exceptional case referred to in Article 9, paragraph 5.*b*, could the residence permit be withdrawn, in the case of the migrant worker refusing to comply with the measures prescribed for him by an official medical authority with a view to the protection of public health.

47. As regards safeguards in favour of workers whose residence permit is withdrawn, it was agreed that the Contracting Parties must grant the migrant workers concerned an "effective right" of appeal within the meaning of Article 13 of the European Convention on Human Rights.

Article 10 – Reception

48. Article 10 deals with settlement and adaptation assistance and help to migrant workers from national public and private services as well as from the consular authorities of their State of origin within the framework of the functions vested to them under international law. Help and assistance provided to migrant workers under Article 10 does not include any financial aid or assistance which may be granted at the discretion of the authorities of the receiving State. The special social services referred to in the third sentence of paragraph 2 include not only public services but also all other public or private bodies or agencies able to assist in the reception of migrant workers.

49. Although the undertaking set out in paragraph 3 is already covered by the provisions of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it was decided to mention it specifically in the Convention in view of the latter's humanitarian purpose.

Article 11 – Recovery of sums due in respect of maintenance

50. The provisions of Article 11 take into account:

- the United Nations International Convention on the Recovery Abroad of Maintenance, signed in New York on 20 June 1956;

- the Hague Convention of 24 October 1956 on the Law Applicable to Maintenance Allowances for Children;

- the Hague Convention of 15 April 1958 on the Recognition and Enforcement of Orders on Maintenance Allowances for Children;

- the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

51. When adopting Article 11, the Joint Committee emphasised that nothing it contains prejudices the national jurisdiction of the courts with regard to disputes relating to the recovery of sums due in respect of maintenance. The purpose of Article 11 is to permit prior recourse to an administrative procedure with a view to reaching a friendly settlement:

- firstly, by recommending the use of the maintenance recovery procedure adopted by the Committee of Ministers of the Council of Europe at its 158th meeting in February 1967 (maintenance recovery claim form);

- secondly, by facilitating the despatch and receipt of maintenance claims, as provided for in paragraph 3 of Article 11. Accordingly, recourse to the courts will always be possible where no friendly settlement can be reached.

52. The Joint Committee agreed that the term "single authority" does not necessarily imply the assignment of exclusive jurisdiction to a particular government department, but signifies that in one State, one Land or one region, only one authority would be responsible for dealing with claims, in order to avoid claimants having to apply to several administrative departments. Accordingly, in federal States, one federal ministry and the ministries of each Land or region could be responsible, whilst elsewhere one ministry could be appointed as the "single authority".

Article 12 – Family reunion

53. In view of its crucial importance in the Convention, no reservations may be made under Article 36 in respect of this article.

54. The purpose of this article is to state the principle that members of the migrant worker's family are authorised to join him at the expiry of a waiting period which shall not exceed twelve months, if the various conditions provided for in the Convention are complied with.

55. In addition, it also provides for the possibility of stipulating a further condition to the implementation of the above principle, concerning the availability of steady resources. An exceptional safeguard clause has been included in case of difficulties as to receiving capacity.

Paragraph 1

56. It was specified that the term "spouse" is intended to apply to both sexes.

57. It was also made clear that the general reference to "conditions analogous to those which this Convention applies to the admission of migrant workers" was chosen so as to cover all relevant clauses of the Convention, including those apt to facilitate the reuniting of families (e.g. the provisions concerning information).

58. Lastly, it should be pointed out that the term "normal" housing is the same as is used in various national legislations as well as in Regulation No. 1612/68 of the Council of the European Communities of 15 October 1968, on freedom of movement for workers within the Community (Article 10, paragraph 3).

Paragraph 2

59. For the purposes of Article 12, paragraph 2, the notion of "steady resources" does not include unemployment or public assistance benefits because paragraph 1 of Article 12 refers to migrant workers lawfully employed in the territory of a Contracting Party.

Paragraph 3

60. The safeguard clause contained in this paragraph was added to the Convention during the final stages of negotiation in order to take into account the special situation of certain States, particularly as regards receiving capacity. Its purpose is to enable a State in exceptional circumstances temporarily to derogate from the obligation to permit families to reunite at the expiry of a waiting period not exceeding twelve months. In view of the humanitarian purpose of the Convention, this derogation has been made subject to a number of specific guarantees of strict application based on those provided for in Article 15 of the European Convention on Human Rights.

61. The system provided for has primarily an exceptional character; accordingly, this possibility of derogation should only be used in very precise circumstances, viz. cases where a Contracting Party would no longer be able, in one or more parts of its territory, to cope with the arrival of members of migrant workers families, in accordance with the provisions of Article 12, paragraph 1, without the available receiving capacity in that or those regions being clearly exceeded with regard to housing, education and public health. On this point, the Convention stipulates that the declaration of derogation must state the "special reasons justifying the derogation with regard to receiving capacity".

62. It necessarily follows that the derogation will normally be justified only in respect of specific parts of the national territory, a statement of the special reasons being required for each such part. This explains why no mention is made in the Convention of any possibility of derogation for the whole of the national territory; subject to the previous comment regarding the very exceptional nature of any such derogation, it was thought that a derogation for several parts of the territory could in fact cover practically the whole of the national territory.

63. A number of safeguards appearing in Article 15 of the European Convention on Human Rights have also been included in Article 12. For instance, such measures could not be in contradiction with undertakings arising out of other international instruments. Similarly, the second sub-paragraph of Article 12, paragraph 3, is based directly on the provisions of Article 15, paragraph 3, of the Human Rights Convention; in addition, it was thought necessary that migrant workers should be informed of the existence of the derogation by means of a publication which the State concerned should issue as quickly as possible.

64. Lastly, a very important additional safeguard is provided by the possibility afforded to every Contracting Party under Article 33, paragraph 6, second sentence, of asking that the Consultative Committee be convened when the provisions of paragraph 3 of Article 12 are brought into operation.

Article 13 – Housing

Paragraph 1

65. Under the terms of this paragraph, the Contracting Parties are required to accord to migrant workers, with regard to access to housing and rents, treatment no less favourable than that accorded to their own nationals, according to domestic laws and regulations.

Paragraph 2

66. This provision relates to the organisation by Contracting Parties, in appropriate cases and in co-operation with the consular authorities acting within their jurisdiction of inspections to ensure that the applicable standards of fitness of accommodation are observed for migrant workers.

Paragraph 4

67. It was thought necessary to include this provision, in particular in view of the Convention's purpose. It was agreed that for purposes of the implementation of this provision, the fitness of housing would be assessed according to the standards normally applied for national workers in any particular region; as the Convention does not distinguish between different categories of housing, the undertaking provided for in this provision is general in scope and applies equally to communal accommodation.

Article 14 – Pre-training – Schooling – Linguistic training – Vocational training and retraining

68. Article 14 states the principle of equality of treatment between migrant workers, members of their families officially admitted and nationals, as regards admission to education and training establishments. Equal entitlement to admission to universities, and higher education establishments in general, does not rule out the possibility of restricting the admission of migrant workers and members of their families, as of nationals, to such establishments on the basis of a *numerus clausus* laid down by a Contracting Party.

69. The expression vocational retraining has been employed intentionally in this article including its title, because it applies not only to migrant workers but also to members of their families, who have in general not yet held employment in the receiving State. Similarly Article 25, concerning re-employment, which applies only to the migrant workers themselves, covers both retraining and occupational rehabilitation. Paragraph 5 was added to Article 14 in order that the vocational training and retraining provided for migrant workers under this provision would be geared as far as possible to the prospect of their return to their State of origin. It was agreed that the purpose of this provision could be achieved if it were followed up by bilateral agreements.

70. As regards paragraph 4 concerning the recognition of diplomas and qualifications, the text, while referring to recognition in accordance with arrangements laid down in bilateral or multilateral agreements. does not deal with the question of the conclusion of such agreements.

Article 15 – Teaching of the migrant worker's mother tongue

71. It was decided that this article, which had originally been placed at the end of Article 30 (return home) should follow Article 14, which deals particularly with linguistic training, more especially as paragraph 5 of Article 14 is also relevant to the return of migrant workers to their country of origin. Article 15 provides that the teaching of the mother tongue of children of migrant workers will, so far as practicable, be the subject of action by common accord between the Contracting Parties.

Article 16 – Conditions of work

72. This article provides that in regard to conditions of work. migrant workers shall enjoy the same treatment as national workers enjoy by virtue of legislative or administrative provisions, collective labour agreements or custom.

73. It is specifically stipulated that it is not possible to derogate by individual contract from the principle of equal treatment referred to in paragraph 1 of Article 16.

Article 17 – Transfer of savings

74. By reason of the importance attached to the principle restated in this article, a principle already stated in Article 19, paragraph 9, of the Social Charter, no reservation may be made under Article 36 in respect of Article 17.

75. It was made clear that Article 17, paragraph 1, refers to arrangements for implementing the principle and that such arrangements must not have the effect of off ending against the principle itself. This also applies to paragraph 2, which is to be implemented through bilateral agreements or by any other means.

Article 18 – Social Security

76. It was decided to keep the very general provisions contained in Article 18 even after the entry into force of the European Convention on Social Security, which took place on 1 March 1977; it was thought that Article 18 retains its usefulness and value, not only with regard to member States which have not yet ratified that Convention, but also for States which are Parties to it, since paragraph 1 refers to bilateral or multilateral agreements in force.

77. Accordingly, paragraph 1 states the principle of equality of treatment for national and migrant workers, whilst paragraph 2 provides for the conservation of rights in course of acquisition and acquired rights and the provision of benefits abroad, by means of bilateral and multilateral agreements.

In view of the foregoing, it was not thought necessary to include Article 18 among those articles listed in Article 36 in respect of which no reservation may be made.

Article 19 – Social and Medical Assistance

78. It was thought that a convention on the legal status of migrant workers could scarcely omit all reference to the question of social and medical assistance which, since 1953, has been covered by a convention in force as at 1 June 1978 in respect of fifteen of the Council of Europe's member States.

79. Article 19 imposes no obligation on States other than the obligations assumed under international instruments.

In the light of the foregoing, it was not thought necessary to include Article 19 among those Articles listed in Article 36 in respect of which no reservation may be made.

Article 20 – Industrial accidents and occupational diseases - Industrial hygiene

80. The special importance to migrant workers of the matters dealt with in this Article explains why no reservations may be made to it under Article 36.

Having regard to the particular situation of migrant workers, it was specified that the equality of treatment provided for in paragraph 1 does not preclude the taking of special measures in this field in their favour.

81. In view of the content and wording of Article 14, paragraph 1, and Article 25, paragraph 2, Paragraph 2 of Article 20 provides that a migrant worker who is victim of an industrial accident or who has contracted an occupational disease in the territory of the receiving State shall benefit from occupational rehabilitation on the same basis as national workers.

Article 21 – Inspection of working conditions

82. According to this article, the same systems of inspection should be used for checking the working conditions of national and migrant workers, responsibility for inspection lying with a body or institution, as the case may be, directly answerable to the public authorities of the receiving State or with such other agency as may be authorised for the purpose by the receiving State.

Article 22 – Death

83. This article concerns the help and assistance to be provided by every Contracting State to enable the bodies of migrant workers deceased as the result of industrial accidents to be transported to the State of origin. It was made clear in this connection that such assistance would also be granted in the case of death due to an occupational disease, but that there could be no general obligation to cover transport costs in such cases. Accordingly the text adopted provides that measures to this effect will be taken within the framework of national legislation or, where necessary, through bilateral agreements.

Article 23 – Taxation on earnings

84. Paragraph 1 of this article is based on Article 21, paragraph 1, of the European Convention on Establishment of 13 December 1955. Its purpose is to state the principle that migrant workers shall not be subject to a system of taxation more burdensome to them than to national workers in similar circumstances.

85. Article 23 does not apply to the modalities (income declarations, deductions at source, etc.) of the duties, charges, taxes and contributions in question provided that they do not have the effect of placing a heavier fiscal burden on migrant workers than that borne by nationals in a similar situation.

Article 24 – Expiry of contract and discharge

Paragraph 1

86. This paragraph establishes the principle of equality of treatment for migrant workers and national workers as regards the normal expiry of a work contract for a specified period or the cancellation of a work contract for an unspecified period.

Paragraph 2

87. This paragraph establishes the principle of equality of treatment for migrant workers and national workers as regards their rights in the event of individual or collective dismissal and unwarranted cancellation of the work contract.

Article 25 – Re-employment

88. This article is particularly important for the implementation of the Convention and especially of Article 9, paragraph 4, where it is mentioned specifically that a worker who is involuntarily unemployed shall be allowed for the purpose of the application of Article 25 to remain on the territory of the receiving State. In addition, for the purposes of re-employment as provided for in Article 25, other relevant provisions of the Convention should be taken into account, particularly Article 27 concerning the use of employment services.

89. Owing to its key importance in the Convention, it has been provided for in Article 36 that no reservations may be made in respect of Article 25.

90. When this article was being finalised, it was specified that the undertaking to facilitate re-employment does not imply for the Contracting Parties an obligation to guarantee access to employment for migrant workers.

Article 26 – Right of access to the courts and administrative authorities in the receiving State

91. In view of the importance of the principle contained in this article, it was decided that it should be embodied in the Convention despite the fact that other international instruments cover the same ground. However, it was stated that the content of Article 26, paragraph 2, regarding legal assistance, is not yet covered by international undertakings on the part of all member States of the Council of Europe. It is also by reason of its importance that no reservations may be made under Article 36 in respect of this article.

92. During the drafting of this article, it was stated that for the purpose of its application the right to obtain assistance referred to therein must be understood to include the right to be represented, in accordance with the interpretation accepted in respect of other international instruments, in particular the European Convention on Establishment of 13 December 1955.

93. Generally speaking, the provision in Article 26 must be seen in the light of the similar provisions of other international instruments, for example, the Hague Convention relating to Civil Procedure of 1 March 1954 and the Brussels Convention of 1968 concerning Jurisdiction and the Enforcement of Civil and Commercial Judgments.

94. For instance, under one or more of these instruments, most Council of Europe member States no longer demand any deposit of security for costs and the few problems still likely to arise on this point ought probably to disappear gradually.

Article 27 – Use of employment services

95. This article must be read with Article 25 (see above). However it also applies to members of the migrant worker's family and is intended to enable them to gain access to employment services under the same conditions as national workers, in order to obtain the same assistance as national workers could claim in the case of comparable difficulties; it is understood, however, that Article 27 may not, any more than Article 25, be interpreted as conferring a right to employment.

Article 28 – Exercise of the right to organise

96. For the same reasons which led to the insertion in the Convention, on account of its framework character, of provisions which already appear in other international instruments, it was decided to keep this Article in the Convention and to state in this explanatory report that it refers to the right to organise as defined in Article 5 of the European Social Charter and ILO Convention No. 87 concerning freedom of association and protection of the right to organise. Accordingly, it cannot be construed as requiring any person to join a trade union organisation.

Article 29 – Participation in the affairs of the undertaking

97. This article is based on the idea that there is not yet equality of treatment as regards participation in firms' affairs and that this is merely an objective whose achievement the Contracting Parties must facilitate, within the limits of their possibilities.

CHAPTER IV

Article 30 – Return home

98. During the drafting of the Convention, the need to bear in mind the prospect of the migrant worker's return home was emphasised on several occasions. The question of return home was specifically mentioned in Article 7, paragraph 3, to which Article 30, paragraph 1, refers, as well as in Article 14, paragraph 5, Article 15 and Article 17, paragraph 3, of the Convention.

99. The provisions of Article 30 require every Contracting Party to assist migrant workers and their families on the occasion of their final return to their State of origin, the question of the provision of financial assistance being left to each Contracting Party's discretion. In this connection, it was recognised that the question of responsibility for the return travel expenses of the worker and his family could, where appropriate, be dealt with within the framework of the work contract between the worker and his employer.

100. Similarly, paragraph 2 requires the States of origin to provide the receiving States with certain information to pass on to migrant workers with a view to their being aware of the conditions in which they will make their return home.

CHAPTER V

Article 31 – Conservation of acquired rights

101. In view of the humanitarian objective of the Convention, it was thought useful to insert in it a clause to prevent the migrant worker from being deprived of rights deriving from existing legislation and agreements.

Article 32 – Relations between this Convention and the laws of the Contracting Parties or international agreements

102. This provision, which is included in a number of instruments drawn up within the framework of the Council of Europe, is intended to supplement Article 31 with regard to the general question of relations between the Convention and the domestic law of Contracting Parties and other international treaties which might be in force or come into force in their respect, and also mentions "steps taken to implement them", which refers to ail measures taken under the Treaties of the European Communities; any such provisions will take precedence over the provisions of the Convention where they are more favourable to migrant workers or, where appropriate, to members of their families.

Article 33 – Application of the Convention

103. In order that the provisions of the Convention may be adjusted as necessary and its content possibly developed, provision is made for the setting-up of a Consultative Committee within a year after its entry into force. The Consultative Committee, the rules governing the organisation and operation of which are based on those contained in Article 24 of the European Convention on Establishment of 13 December 1955, is intended as the framework in which the governments concerned with the application of the Convention will be able to examine together ail the questions relating thereto and to submit opinions, recommendations and proposals to the Committee of Ministers as appropriate.

104. For this reason it is provided in the Convention itself that the committee will be composed of representatives of the Contracting Parties and that other Council of Europe member States will be able to be represented by observers. Similarly, the Convention states the voting rules which the committee will apply with regard to the various categories of opinions, proposals or recommendations originating from the Contracting Parties which it puts forward and specifies the arrangements for convening the committee. Any questions not settled in the Convention can be covered by the Consultative Committee itself in its rules of procedure, subject to compliance with the provisions of the Convention.

105. Generally speaking, the Consultative Committee remains under the control of the Committee of Ministers of the Council of Europe, which will decide what action to take on any opinions, proposals and recommendations it submits. This applies in particular to any revision of the Convention, which will be effected by means of a Protocol adopted by the Committee of Ministers and opened for signature by the Council of Europe member States.

CHAPTER VI

Articles 34 – 38

106. In general, these provisions follow the pattern of final clauses adopted by the Committee of Ministers of the Council of Europe for conventions and agreements drawn up within the organisation. Attention should be drawn, however, to the following provisions.

Article 36 – Reservations

107. This article sets out the conditions under which States can make reservations.

It was agreed, firstly, that Chapter I, which contains only one article, Article 1 (Definition), and Chapters V and VI (Articles 31-38) which contain in particular the Convention's final clauses, must be applied by every Contracting Party.

As regards the substantive provisions contained in Chapters II-IV of the Convention, twenty-nine in number, Article 36 provides that any Contracting Party may make one or more reservations which may relate to no more than nine of these articles. It has been stressed that it was not possible to make reservations in respect of specific paragraphs of articles since as a general rule each article of the draft Convention constitutes a materially inseparable whole.

In addition, it is provided that no reservation may be made in respect of Articles 4, 8, 9, 12, 16, 17, 20, 25 and 26.

Article 37 – Denunciation of the Convention

108. The Convention may not be denounced by a Contracting Party within five years from the date of its entry into force in respect of that Contracting Party. On the other hand, as the Convention is not open to accession by non-member States of the Council of Europe, it is specifically stated that any Contracting Party ceasing to be a member of the Council of Europe will cease to be a Party to the Convention.