THE 20TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

General Considerations on Positive and Negative Obligations in the Context of the International Protection of Migrant Workers

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Abstract: The protection of the rights of migrant workers and their family members constitutes a key area of International Human Rights Law. This protection goes beyond merely setting limitations on what States must refrain from doing in breach of international standards. A comprehensive analysis of this field requires consideration of both positive and negative obligations through the lens of international human rights instruments. International law provides a broad array of instruments—both binding and recommendatory—in the fields of human rights protection and, more specifically, the protection of migrant workers. These human rights instruments form the cornerstone of the legal framework dedicated to migrants' rights, underscoring the critical interplay between States' negative and positive obligations. This dual perspective is essential to addressing complex vulnerabilities and ensuring the comprehensive well-being of migrants throughout all phases of the migration process.

Keywords: human rights; positive obligations; negative obligations; interference; migrants

1. Introduction: The Evolution of State Obligations in International Human Rights Law

The development of human rights in international law finds its point of departure in the year 1945, with the adoption of the Charter of the United Nations. This founding text signalled, in an unprecedented manner, the international community's commitment to the protection of human dignity. Its Preamble directly affirms the faith of the international community in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women (Charter of the United Nations, 1945). This statement marked the beginning of a conceptual shift in the international legal order, where the safeguarding of fundamental rights and freedoms became a matter of primary concern.

Building upon the principles enshrined in the UN Charter, a coherent and evolving framework of international human rights treaties gradually took shape. Noteworthy among the most significant are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966.

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This process was mirrored at the regional level through the adoption of legal instruments such as the European Convention on Human Rights (ECHR) (1950), the European Social Charter (1961), and the African Charter on Human and Peoples' Rights (1981), each reflecting specific regional concerns and establishing appropriate mechanisms of protection.

At the domestic level, this evolution was reflected in the incorporation of international human rights standards into national constitutions and legal frameworks. Together, international and domestic norms form the essential structure of the human rights protection system. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of the rule of law at the national and international levels (International Human Rights Law, 2025).

The same trend manifested domestically, with international human rights standards being integrated into national constitutions and legislative frameworks. Most States have also adopted constitutions and other laws which formally protect basic human rights. Thus, the international and domestic normative systems together form the foundational architecture of the human rights protection regime. Furthermore, soft-law instruments - including declarations, resolutions, principles, and recommendations - substantially contribute to the dynamic evolution of international human rights law.

The effective protection of human rights naturally presupposes the existence of a consolidated rule of law, both at the national level and in the conduct of international relations. According to the Preamble of the Vienna Convention on the Law of Treaties (1969), the principles of free consent and good faith, alongside the rule of *pacta sunt servanda*, reflect the universal commitment of states to respect the international legal obligations they have undertaken (Vienna Convention on the Law of Treaties, 1969).

Within the context of a consolidated international human rights framework, it is now well established that states parties to international treaties incur distinct legal obligations. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses (International Human Rights Law, 2025). These derive from general principles of international law and encompass the tripartite duty of the state: to respect, to protect, and to fulfil the rights and freedoms of individuals under its jurisdiction.

This tripartite structure of state obligations raises an essential question: what does the positive obligation of states in the field of human rights concretely entail? From the perspective of this paper, emphasis is placed on the effective protection of fundamental rights. Given the objective of this paper and its focus on the effective safeguard of human rights and fundamental freedoms, it is relevant to highlight the obligation of states to respect these rights, which primarily requires refraining from any arbitrary or unjustified interference with the exercise of internationally recognized rights. Equally important is the obligation to protect, which entails the state's responsibility to prevent and respond to abuses committed by third parties against individuals or targeted groups. Finally, the obligation to fulfil entails the adoption of positive measures - legislative, administrative, and institutional - that are necessary to ensure an environment conducive to the full and effective enjoyment of fundamental rights and freedoms. It means, that the obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights (International Human Rights Law, 2025).

It is essential to underline that, by ratifying international human rights instruments, States undertake to transpose into their domestic legal order the norms accepted at the international level. Where national

legislation or procedures do not provide sufficient guarantees of protection, the international and regional systems for the protection of human rights offer mechanisms for individual or collective complaints, aimed at supporting compliance with international standards and ensuring their effective implementation at the national level.

When emphasis is placed on a specific international treaty or instrument - without overlooking the relevance of non-binding instruments - the aim of such a legal instrument remains the enunciation of rights. The protection thus afforded depends not only on the enforcement mechanisms established, but also on the obligations imposed on States. Accordingly, international supervisory bodies place particular emphasis on clarifying the nature, limits, and scope of these obligations.

A variety of means are employed by the control bodies to define the extent and scope of states' undertakings. One of the most interesting is to consider that every right may entail three kinds of obligation: the "obligation to respect", which requires the state's organs and agents not to commit violations themselves; the "obligation to protect", which requires the state to protect the owners of rights against interference by third parties and to punish the perpetrators; and finally the "obligation to implement", which calls for specific positive measures to give full realization and full effect to the right (Akandji-Kombe, 2007, p. 5).

Within this framework of international obligations, the protection of migrant workers and their family members emerges as a distinct and priority domain. The protection of the rights of workers employed outside their countries of origin has been the subject of increasing concern throughout the UN system. (International Legal Framework for the Protection of Migrant Workers) The rights of individuals in the context of migration are governed by a complex body of international norms, rooted in the general principles of international human rights law and complemented by specialised international instruments.

2. Positive and Negative Obligations: Conceptual Clarifications

As established in international law, States' obligations are generally classified into two categories: negative obligations and positive obligations. This distinction is particularly relevant in the context of the protection of migrants, as the effective exercise of their rights depends both on the State's abstention from abusive conduct and on its active intervention to ensure access to essential rights and services.

Positive obligations require national authorities to take proactive steps—that is, to adopt reasonable and appropriate measures aimed at safeguarding individual rights. These measures may be judicial in nature, such as imposing sanctions on public officials who abuse their authority in the treatment of smuggled migrants. Alternatively, they may involve more practical interventions, for instance, implementing preventive measures in detention facilities to reduce the risk of self-harm or suicide among smuggled migrants. In essence, positive obligations are obligations "to act," aimed at ensuring the effective respect for and protection of human rights.

Negative obligations refers to a duty not to act; that is, to refrain from action that would hinder human rights. For instance, by not returning smuggled migrants to countries where they face risks of persecution, the State will be abiding by the corresponding negative obligation. Importantly, the fulfilment of a negative obligation might very well require positive action. This may include adoption of laws, regulations and standard operating procedures that prohibit push back policies of migrant smuggling vessels found close to the State's maritime border. As an example in this respect can be mentioned the obligations of states that derives from Art. 1 of the ECHR. According to general fundamental rights doctrine, "securing" these rights, as the States Parties are bound to do under Article

1 of the Convention, implies that they must abstain from interfering with the free exercise of such rights. These obligations for the States to abstain from undue interference with the Convention rights and freedoms are called "negative obligations" (Gerards, 2023, pag. 174).

Given the specific nature of migrant protection, the State's positive obligations acquire particular significance. In most cases, mere abstention from harmful actions - that is, the fulfilment of negative obligations - is insufficient to ensure respect for the fundamental rights of migrants or to guarantee them a minimum standard of well-being. Due to their frequently precarious legal and social status, limited access to services, and exposure to multiple forms of vulnerability, migrants require proactive interventions and targeted positive measures from State authorities to ensure their effective protection. European Court of Human Rights in case *M.S.S. v. Belgium and Greece* reiterated that the state has a positive obligation to protect individuals in situations of extreme vulnerability, including migrants and asylum seekers, especially where it is aware or ought to be aware of the risks involved (M.S.S. v. Belgium and Greece, 2011).

In the context of a systematic approach to the protection of migrants and their family members, the identification of key areas of positive obligations is of particular importance. These may be analysed both from the perspective of general international human rights treaties and specialised instruments on migration. Among the main areas, the following can be distinguished:

- access to basic services: states have a positive obligation to ensure that migrants benefit from access to essential services, including:

a) *healthcare* (provision of emergency medical care, maternal assistance, and treatment for communicable diseases);

b) *education* (ensuring access to primary and secondary education for migrant children);

c) *housing* (in certain situations, securing or facilitating access to adequate housing, particularly for vulnerable migrants).

- procedural safeguards: positive obligations also require the establishment and maintenance of fair and effective procedures, such as:

a) *fair proceedings in immigration matters* (ensuring that migrants are informed of their rights, have access to legal assistance, and may challenge decisions);

b) *access to justice* (guaranteeing that migrants may seek redress before judicial bodies for violations of their rights);

c) e*ffective investigations and remedies* (requiring the investigation of abuses against migrants, the prosecution of perpetrators, and the provision of appropriate remedies to victims).

- protection against violence and exploitation:

a) *combatting trafficking in human beings* (implementing measures to prevent and punish the trafficking of migrants, protect victims, and ensure the prosecution of offenders);

b) *preventing and addressing xenophobia and discrimination* (adopting and enforcing policies aimed at eliminating discrimination and fostering tolerance towards migrants);

c) *protection of vulnerable groups* (providing targeted protection to particularly vulnerable migrant groups, such as unaccompanied minors, victims of violence, and migrant workers in precarious conditions). (Positive and negative obligations of the State)

In support of States' positive and negative obligations regarding the protection of migrant workers, international law establishes a comprehensive legal framework. This framework consists of both binding and non-binding instruments, applicable not only within the general sphere of human rights but also specifically tailored to the protection of migrant workers. As an example, the International Convention on the protection of the rights of all migrant workers and members of their families (1990) provides binding norms on the rights of migrant workers and reflects the dual obligation of states: to refrain from rights violations and to adopt measures ensuring effective protection (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990).

3. The Protection of Migrant Workers Within the Universal and Regional Human Rights Protection Systems

Within the universal system of human rights protection, migrants are entitled to the rights guaranteed under core international human rights treaties. These include the International covenant on civil and political rights (ICCPR) and the International covenant on economic, social and cultural rights (ICESCR), as well as from the protections provided by the Convention on the rights of the child (CRC) and its Optional Protocols, the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT), and the International convention for the protection of all persons from enforced disappearance (CPED).

As previously noted, the International convention on the protection of the rights of all migrant workers and members of their families (1990) codifies a comprehensive body of specific rights aimed at ensuring the dignity, safety, and well-being of migrant workers and their families, while the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations convention against transnational organised crime, complements this international framework of protection. (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990)

At the regional level, the legal framework of the Council of Europe (CoE) is of particular importance in ensuring the protection of migrants' rights. The ECHR guarantees the rights of all persons under the jurisdiction of a State Party, including stateless individuals and those in a migratory situation. (European Convention on Human Rights, 1950) The (Revised) European Social Charter further develops this protection in the field of social rights and, in certain provisions, expressly includes migrant workers (European Social Charter, 1961). The case law and interpretative practice of the European Committee of Social Rights reflect an evolutive understanding of rights, based on the principles of non-discrimination and effective access to entitlements, regardless of legal status.

In addition to these core instruments, the Council of Europe has adopted several sectoral conventions relevant to the protection of migrants. These include the European Convention on the legal status of migrant workers (1977), which sets out specific rights in the areas of employment and social security, and the Council of Europe Convention on action against trafficking in human beings (2005), which establishes a binding legal framework for the prevention of trafficking, the protection of victims, and the prosecution of offenders. Other relevant instruments include the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (1987), the European Convention on extradition (1957), the European Convention on the suppression of terrorism (1977), and the European Code of Social Security (1964). These instruments are applicable in contexts involving deprivation of liberty, expulsion proceedings, or access to social protection and related services for migrants.

In addition to its core binding treaties, the Council of Europe's political institutions - notably the Committee of Ministers and the Parliamentary Assembly - have adopted a wide range of recommendations and resolutions concerning the rights of migrants. In this respect, can be mentioned Recommendation on life projects for unaccompanied migrant minors (Recommendation CM/Rec, 2007) and Resolution 2310 (2019) - Labour migration from eastern Europe and its impact on sociodemographic processes in these countries (Resolution 2310, 2019) - Labour migration from eastern. These soft law instruments play a significant role in shaping European standards and guiding the interpretation of State obligations, particularly in light of the overarching principle of respect for human dignity. While not legally binding, they contribute to the evolving normative framework within which member States are expected to act in accordance with human rights values.

Complementing this institutional framework, a series of international legal instruments adopted under the auspices of the Council of Europe, the International Labour Organisation, and the United Nations provide a structured basis for understanding the scope of States' obligations towards migrant workers and their families. Among the most relevant instruments are:

- ILO Convention No. 97 concerning migration for employment (1949);
- European Convention on the legal status of migrant workers (Council of Europe, 1977);
- International Convention on the protection of the rights of all migrant workers and members of their families (United Nations, 1990);
- ILO Convention No. 181 concerning private employment agencies (1997);
- Revised European Social Charter (Council of Europe, 1996).

Together, these instruments establish a coherent legal framework for the interpretation of both positive and negative obligations incumbent upon States and remain essential references for the international protection of migrant workers and their families.

4. The Codification of Positive and Negative Obligations in Key International Instruments on Migrant Workers

International Labour Organization Convention No. 97 concerning Migration for Employment (1949), ratified by the Republic of Moldova through Law No. 209-XVI of 29 July 2005, establishes a range of positive obligations for State Parties aimed at ensuring the effective protection of migrant workers.

Among these obligations is the duty to ensure access to accurate information regarding employment and living conditions in the country of destination. Article 2 of the Convention provides for the obligation "to maintain an adequate and free service to assist migrants for employment and, in particular, to furnish them with accurate information" concerning the applicable legal framework on immigration, working conditions, and standards of living. These measures are reinforced by Article 3, which requires the prevention of misleading propaganda and exploitation through the accessible provision of such information. (Migration for Employment Convention, 1949 Art. 3)

Furthermore, Article 5 of the Convention requires States to ensure that migrant workers have access to adequate medical care and appropriate sanitary conditions during their journey and upon arrival. These obligations extend to members of migrant workers' families as well. (Migration for Employment Convention,1949, art. 5) Also within the scope of positive obligations, the Convention guarantees the

application of the principle of non-discrimination in working conditions. Migrant workers and their families must receive treatment equal to that of the nationals of the receiving State, particularly in relation to remuneration, trade union membership, and access to housing.

As for negative obligations, these require States to refrain from actions prohibited under Convention No. 97. The Convention provides, inter alia, for the following obligations:

- non-discrimination in employment, as affirmed in the provision stating that "States shall not adopt or apply discriminatory laws or practices disadvantaging migrant workers in matters relating to employment";
- refraining from imposing unjustified restrictions, formulated through the provision requiring that "States shall refrain from imposing unjustified restrictions on the rights of migrant workers, ensuring their freedom to choose employment or to remain legally in the host country for an initial period." (Migration for Employment Convention,1949, art. 5).

By undertaking these obligations, States contribute to the establishment of a fair and humane framework for migrant workers, in accordance with the international standards set by the International Labour Organization in the field of labour migration.

The European Convention on the legal status of migrant workers (1977) establishes a set of rights and guarantees applicable to migrant workers who are nationals of the Contracting Parties. (European Convention on the Legal Status of Migrant Workers, 1977) The Convention covers areas such as access to information, working conditions, social protection, family reunification, housing, and access to basic public services. It sets out both obligations requiring active measures by States and prohibitions aimed at preventing unfair or discriminatory treatment.

Pursuant to Articles 6 and 10 of the Convention, States are obliged to provide migrant workers with appropriate and accessible information concerning working and living conditions, social entitlements, wages, family reunification, and social security. This information must be made available prior to departure and in a language the migrant understands. Furthermore, under Articles 8 and 9 States are obliged to issue and renew work and residence permits, thereby ensuring legal stability and security of stay. (European Convention on the Legal Status of Migrant Workers, 1977, art. 8-9).

Another essential pillar of protection is the facilitation of family reunion, equal access to housing, education and vocational training, and support for learning the language of the host State. These provisions are complemented by the obligation to guarantee access to health care and social assistance under the same conditions as for nationals of the host State (European Convention on the Legal Status of Migrant Workers, 1977, art. 12-14).

States are also under the obligation to ensure equal treatment in terms of working conditions as set forth in Article 16 (European Convention on the Legal Status of Migrant Workers, 1977, art. 16). This includes guarantees related to working hours, remuneration, access to vocational training, and occupational health and safety (European Convention on the Legal Status of Migrant Workers, 1977, art. 20). Moreover, Article 24 provides protection against arbitrary dismissal or unjustified termination of employment. In situations of involuntary unemployment, the host State is required to offer assistance with re-employment, which may include retraining or skills development measures in accordance with Articles 14 and 25 (European Convention on the Legal Status of Migrant Workers, 1977, art. 14, 25).

In addition to outlining positive obligations, the The European Convention on the legal status of migrant workers imposes a series of prohibitions designed to safeguard migrant workers from discriminatory or disproportionate treatment. For example, Article 23 prohibits the imposition of taxes, contributions, or

charges on migrant workers that are more onerous than those levied on nationals. Furthermore, the Convention prohibits unequal treatment in access to essential services such as housing, education, health care, and justice, as provided in Articles 13, 16, and 26. Of particular importance, Article 26 guarantees effective access to judicial and administrative mechanisms, including the right to legal assistance and interpretation in both civil and criminal proceedings, thereby reinforcing procedural safeguards and access to remedies (European Convention on the Legal Status of Migrant Workers, 1977, art. 26).

Furthermore, Articles 28 and 29 prohibit any unjustified restrictions on freedom of association or on the right to participate in professional life. Migrant workers must be allowed to organise and join trade unions and participate in workplace representation bodies on equal footing with nationals.

Finally, the Convention obliges States to permit migrant workers to transfer their earnings and fulfil financial obligations, including maintenance payments, as stipulated in Articles 11 and 17. States are also required to eliminate administrative barriers to freedom of movement and to support voluntary return to the country of origin, as reflected in Article 30 of the European Convention on the Legal Status of Migrant Workers (1977) (European Convention on the Legal Status of Migrant Workers, 1977, art. 4, 7).

Taken as a whole, the 1977 Convention embodies a balanced and rights-based legal framework: it affirms the State's positive duty to adopt active measures for the protection, integration, and inclusion of migrant workers, while simultaneously placing legal limits on state actions that may jeopardize the equal enjoyment of social, economic, and legal rights by migrant workers.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (International Legal Framework for the Protection of Migrant Workers, 1990) constitutes a comprehensive normative instrument dedicated to strengthening the legal protection of migrants throughout all phases of the migration process—departure, transit, residence, and return. It reaffirms the universality of human rights and underscores their equal applicability to all migrant workers and their families, irrespective of their legal status.

A fundamental characteristic of the Convention is that, beyond reaffirming the general rights recognised in core international human rights instruments, it articulates a set of rights specifically adapted to the migratory context. These include protections in areas such as employment, social security, legal safeguards, and living conditions. In doing so, the Convention establishes a comprehensive and binding framework of obligations for States Parties - whether as countries of origin, transit, or destination - structured around two interrelated dimensions: (I) the obligation to abstain from actions that would infringe upon the rights of migrant workers, and (II) the obligation to adopt positive measures to guarantee the effective and non-discriminatory enjoyment of those rights (International Legal Framework for the Protection of Migrant Workers, 1990).

Accordingly, States are required to respect the prohibition of discrimination in the exercise of any right recognized by the Convention, including on grounds such as nationality, legal status, race, sex, religion, or social origin. The Convention prohibits arbitrary detention, collective expulsion, and cruel, inhuman, or degrading treatment or punishment. It also protects the right to privacy and the confidentiality of personal data, stipulating that any restrictions on these rights must be proportionate, justified, and in conformity with international standards (International Legal Framework for the Protection of Migrant Workers, 1990, art. 1, 7, 22).

In parallel, the Convention requires States to adopt concrete measures to protect the rights of migrant workers and their families. These include the obligation to protect the physical integrity of migrants and to investigate acts of violence committed against them; to ensure effective access to justice, including

through the provision of legal assistance and interpretation; and to provide clear and accessible information concerning residence conditions, employment, and entitlements in the country of destination (International Legal Framework for the Protection of Migrant Workers, 1990, art. 9, 18, 33). This last obligation lies in particular with the State of origin and implies that migrant workers must be adequately informed prior to their departure.

With regard to the applicability of the principle of non-discrimination, States Parties are required to refrain from discrimination against migrant workers and members of their families on any ground such as nationality, race, sex, religion, or social origin (International Legal Framework for the Protection of Migrant Workers, 1990, art. 7).

This obligation implies that States may not adopt legislation or policies that treat migrant workers less favourably than their own nationals. This obligation implies that States may not adopt legislation or policies that treat migrant workers less favourably than their own nationals, unless such treatment is based on an objective and reasonable justification. An example of such justification, grounded in law and subject to established procedures, arises in the context of the prohibition of arbitrary detention (International Legal Framework for the Protection of Migrant Workers, 1990, art. 16).

The obligation to refrain from conduct that would jeopardise the enjoyment of rights guaranteed by the Convention is also reflected in the prohibition of torture and inhuman or degrading treatment or punishment. States must ensure that migrant workers and members of their families are not subjected to such treatment.

Moreover, in light of the specific guarantees applicable to migrants under the Convention, States are prohibited from carrying out collective expulsions of migrant workers; each expulsion must be examined individually. These obligations also encompass the protection of the right to privacy (International Legal Framework for the Protection of Migrant Workers, 1990, art. 14).

In parallel, the Convention imposes positive obligations on States Parties to take specific measures to ensure that the rights of migrant workers and their families are protected and respected.

Pursuant to Article 9 of the Convention, States Parties have a positive obligation to take appropriate measures to safeguard the life of migrant workers and members of their families, including by investigating and prosecuting acts of violence committed against them. Similarly, Article 18 requires States to guarantee migrant workers effective access to national courts to enable them to seek redress in the event of rights violations. In this context, the provision of legal assistance or interpretation services may be necessary.

An essential element in guaranteeing the effective exercise of human rights and fundamental freedoms is access to relevant information. In this regard, under Article 33 of the Convention, countries of origin have a positive obligation to inform their nationals—prior to departure—about the conditions of admission, legal residence, and employment in the receiving State, as well as about their rights and obligations (International Legal Framework for the Protection of Migrant Workers, 1990, art. 33).

From the above, it may be concluded that this international instrument has a comprehensive character, addressing both the recruitment process of migrant workers and the protection of their rights upon admission to the territory of the receiving State. The Convention provides the first international legal definition of the term "migrant worker," along with other specific categories such as seasonal and frontier workers. Although in certain respects its provisions do not fully align with the standards set out in earlier conventions of the International Labour Organization (ILO), the Convention enshrines the principle of equal treatment and protects migrant workers against all forms of discrimination. However,

unlike certain ILO instruments, it does not establish detailed minimum standards in this regard (Luca, 2022, p. 84).

Taken as a whole, the Convention reflects a balanced system of positive and negative obligations, imposing on States both the duty to act in order to protect and ensure the rights of migrants (positive obligations), and the duty to refrain from violating or undermining those rights (negative obligations). It constitutes one of the most comprehensive, yet also one of the least ratified, core international human rights instruments—mainly due to States' reluctance to assume the extensive obligations it entails, particularly concerning the protection of migrants in an irregular situation.

International Labour Organization Convention No. 181 concerning private employment agencies (1997) provides an essential international legal framework for regulating the operation of such entities and for safeguarding the rights of migrant workers. The decision to adopt it reflected an understanding of the potential contribution private employment agencies can make to a flexible labour market, alongside a recognition of the importance of safeguarding against exploitation and unfair practices, especially in cross-border labour migration.

This Convention establishes a series of positive obligations for States Parties, aimed at regulating private employment agencies and ensuring the protection of workers, including migrant workers, from abuse and exploitation. Among the key obligations is the requirement to establish a system of licensing or certification for such agencies, (International Human Rights Law, 2025, art. 3) coupled with detailed regulation of their operations and a duty to ensure effective safeguards against abuse, discrimination, and exploitation.

More specifically, States Parties are obliged to:

- guarantee freedom of association and the right to collective bargaining for workers employed through private employment agencies (Article 4);
- ensure equal treatment in access to employment, prohibiting discrimination on the basis of race, sex, religion, national origin, or disability (Article 5);
- protect workers' personal data, ensuring that its processing is limited to information that is relevant and appropriate (Article 6);
- prevent the engagement of child labour by private employment agencies (Article 9);
- provide enhanced protection for migrant workers recruited or placed by private employment agencies, including through the imposition of sanctions on agencies engaged in fraudulent or abusive practices (International Human Rights Law, art. 8).

In parallel, the Convention also lays down a set of negative obligations, explicitly prohibiting certain exploitative practices by private employment agencies. The most significant of these is the prohibition on charging workers any fees or related costs, whether directly or indirectly, for services rendered by such agencies (International Human Rights Law, 2025, art. 7(1)).

Exceptions to this prohibition are permissible only under narrowly defined conditions, must be in the interest of the workers, and are subject to prior consultation with the social partners. This safeguard aims to prevent the financial exploitation of migrant workers jobseekers and to ensure that recruitment practices are governed by principles of fairness, transparency, and social dialogue (International Human Rights Law, art. 3, art. 7(2)).

Another important set of negative obligations arises from the need to safeguard the fundamental rights of workers placed temporarily with user enterprises, including access to minimum wages, fair working conditions, social security, vocational training, and protection against occupational accidents or employer insolvency (Convention No. 181 concerning Private Employment Agencies, 1997, art. 11). At the same time, States are required to clearly define the respective responsibilities of the private employment agency and the user enterprise, in order to avoid regulatory gaps (Convention No. 181 concerning Private Employment Agencies, 1997, art. 12).

With regard to the functioning of the institutional framework, ILO Convention No. 181 imposes a series of procedural positive obligations on States Parties. These include the establishment of effective complaint mechanisms, the regular inspection of private employment agencies, the systematic collection of data, and the promotion of cooperation between public and private employment services (Convention No. 181 concerning Private Employment Agencies, 1997, art. 10, 13-14). In addition, States are required to ensure the imposition of appropriate and effective sanctions for violations of the Convention's provisions, thereby reinforcing accountability and ensuring compliance with its regulatory standards (Convention No. 181 concerning Private Employment Agencies, 1997, art. 14(3)).

Overall, the Convention reflects an effort to reconcile the promotion of private employment agencies as actors in a functioning labour market with the imperative to ensure adequate protection for workers. This balance is particularly relevant in the case of migrant workers, who often face increased risks of exploitation and discrimination.

The European Social Charter, initially adopted in 1961 and revised in 1996, constitutes a key regional instrument for the protection of social and economic rights in Europe. It expressly includes the protection of the rights of migrant workers and their families. Although, unlike European Union law, the Charter does not enshrine a right of entry into the territory of the Contracting States, it imposes a set of both positive and negative obligations aimed at ensuring the effective protection of these persons, with particular emphasis on equal treatment, social integration, and protection against discrimination and arbitrary expulsion.

At the core of the Charter's protection for migrant workers are Articles 18 and 19, which recognise the right to engage in gainful employment and the right to protection and assistance for migrant workers and their families. These provisions require States not only to abstain from discriminatory practices (negative obligations) but also to adopt proactive support measures (positive obligations), such as liberalising access to the labour market, facilitating family reunification, and ensuring access to social, educational, and healthcare services (European Convention on Human Rights, 1950, art. 18, 19).

Under Article 18 (1-3), States Parties are required to apply their regulations on the employment of migrant workers in a "spirit of liberality," to reduce administrative formalities and fees, and to periodically liberalise conditions for access to the labour market. According to the interpretation of the European Committee of Social Rights (ECSR), this obligation entails, for example, avoiding unjustified restrictive conditions on work permit validity or geographic/sectoral limitations on access to employment (European Convention on Human Rights, 1950, art. 18 (1-3)).

Article 19 provides a detailed framework for the protection of migrant workers and their families, including the obligation to provide accurate and accessible information on working and living conditions (Art. 19:1), to ensure medical assistance and sanitary conditions during travel and upon arrival (Art. 19:2), to facilitate cooperation between the social services of the States of origin and destination (Art. 19:3), and to guarantee equal treatment in matters of remuneration, working conditions, housing, and access to justice (Art. 19:4, 7). Article 19§6 recognises the right to family reunification, while Articles

19:11-12 require States to promote both the learning of the host country's language and the migrant's mother tongue (European Convention on Human Rights, 1950, art. 19).

An innovative feature of the Charter is the extension of these obligations to self-employed migrant workers (art. 19:10), reflecting its commitment to inclusion across different forms of employment (European Convention on Human Rights, 1950, art. 19).

The Charter encompasses negative obligations - such as the prohibition of discrimination (art. E), the guarantee of access to collective bargaining (art. 6), and the prohibition of arbitrary expulsion (art. 19:8)—as well as positive obligations, including the duty to adopt active employment policies (art. 1), promote vocational training (art. 9), and ensure effective access to social rights (European Convention on Human Rights, 1950, art. 13, 20).

It is essential to emphasise that these positive and negative obligations are interdependent and complementary, forming a coherent normative system oriented towards the respect for human dignity, fairness, and social justice. This conceptual distinction is also reflected in the case law of the European Court of Human Rights, which, although interpreting an instrument primarily concerned with civil and political rights, has consistently recognised positive obligations in the area of social rights. In this respect, the Court has developed a judicial practice that imposes positive duties on States to ensure the effective protection of materially grounded rights under the European Convention on Human Rights (ECHR). (Poalelungi, 2015, p. 119).

In numerous cases, the Court has affirmed that the obligation to respect Convention rights requires not only abstention from arbitrary interference (negative obligations), but also the adoption of positive measures to ensure the effective exercise of such rights—particularly where human dignity is at stake. This evolution in jurisprudence supports an expansive interpretation of the Revised European Social Charter and contributes to the consolidation of a common European approach to the protection of fundamental rights.

Moreover, the jurisprudence of the European Court of Human Rights has significantly reinforced the relevance of both positive and negative obligations in the context of migrant protection. Through an evolutionary interpretation of the European Convention on Human Rights, the Court has progressively extended the scope of certain provisions—particularly Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 8 (right to respect for private and family life) (M.S.S. v. Belgium and Greece, 2011) — to encompass not only obligations to refrain from unlawful interference, but also affirmative duties to act.

These positive obligations have been applied in a range of contexts, including the requirement to ensure dignified living conditions, the prevention of arbitrary or disproportionate expulsions, and the duty to combat discrimination in both law and practice. This jurisprudential development contributes to a greater convergence of standards between the European Convention on Human Rights and the European Social Charter, thereby strengthening the overall framework for the protection of migrant rights in Europe.

5. Conclusions

International and regional human rights instruments constitute the foundational legal framework for the protection of migrant workers and members of their families. The effectiveness of these normative regimes resides in the articulation of a dual dimension of State responsibility: on the one hand, negative obligations, which prohibit arbitrary or discriminatory interference with migrants' rights; and on the

other hand, positive obligations, which require States to take active and effective measures to ensure access to rights and essential services.

This dual approach reflects a progressive understanding of the multifaceted vulnerabilities inherent to the migration experience and underscores the imperative of ensuring substantive protection, rather than relying solely on formal legal guarantees. While negative obligations function as a protective barrier against violations, positive obligations compel States to establish the material, legal, and institutional conditions necessary for the full and meaningful exercise of internationally recognised rights. A good example of such approach being the ECtHR case-law and particularly he state's positive obligations under Article 2 ECHR reiterated by the ECtHR in *Öneryıldız v. Turkey* case (2004).

The interdependence of these obligations is essential in a normative system aimed not only at protecting rights but at ensuring the realisation of human dignity. Recent developments in international jurisprudence and the practice of monitoring bodies confirm the need for a flexible and context-sensitive application of these obligations, in line with the evolving dynamics of migration and the complexity of contemporary social realities.

Therefore, the reinforcement of migrant workers' rights protection requires more than the mere ratification of international treaties: it demands a genuine and continuous commitment by States to implement these norms in both letter and spirit, thereby contributing to the construction of a coherent, fair, and effective legal framework grounded in social justice, inclusion, and unconditional respect for human dignity.

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