



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
16 March 2012
English
Original: French

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Fifteenth session

Summary record of the 168th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 September 2011, at 10 a.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Initial report of Argentina (continued) (CMW/C/ARG/1; HRI/CORE/1/Add.74; CMW/C/ARG/Q/1 and Add.1)

At the invitation of the Chairperson, the delegation of Argentina took places at the Committee table.

1. **The Chairperson** invited the delegation of Argentina to continue answering the questions raised at the previous meeting.
2. **Mr. Cavaleri** (Argentina), with reference to article 23 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, said that consular officers ensured that Argentines living abroad did in fact enjoy the rights set forth in international instruments and in domestic law, whether they had been born with Argentine nationality or had acquired it. In that regard, the Minister for Foreign Affairs had reminded the consuls-general and the heads of consular sections that they were required to attend to the requests and needs of their fellow citizens abroad and, in particular, to receive them in person when requested, to protect their interests within the limits of international law, to provide them with aid and assistance, and to visit detention centres in order to verify whether the Argentine nationals held there received adequate treatment and were represented by the Argentine consular or diplomatic authorities. The protection given to the interests of Argentines abroad was based on a series of legal texts protecting the right to life, liberty, integrity, security, a fair trial and non-discrimination. Some of those texts had constitutional status in accordance with article 75 of the Constitution, including the Universal Declaration of Human Rights and certain international human rights conventions to which Argentina was a party. In the course of their visits to Argentines in detention, consular officers gathered certain data (concerning the detainees, their conditions of detention and the progress of their judicial proceedings), which they passed on to the General Directorate for Consular Affairs.
3. Responding to a question raised earlier, he explained that Argentina granted customs privileges to its nationals who resettled in Argentina, particularly for their vehicles, and that consuls were required to report that information. With regard to the State's relations with the Argentine diaspora, two programmes had been set up. The *Raíces* ("Roots") programme (Network of Argentine Researchers and Scientists Abroad) was designed to strengthen the country's scientific and technological capabilities, both by establishing links with Argentine researchers living abroad and by encouraging researchers working in Argentina to remain in the country and to encourage those who preferred to work in the country to return to Argentina. The *Volver a Trabajar* ("Coming Back to Work") programme, established by the Ministry of Foreign Affairs in cooperation with the Ministry of Science, Technology and Productive Innovation, private companies and the 124 Argentine consular offices abroad, was intended to establish links with all Argentines living abroad and to help them prepare for their possible return to the country. Also with a view to establishing links with its nationals abroad, in October 2010 Argentina had actively participated in the first meeting of Argentine associations and social networks in Europe and Mediterranean countries, organized by the Federation of Argentine Associations in Spain and Europe. Participants in the event had shared their experiences, particularly with regard to the difficulties faced by Argentines in various countries, human rights and even cultural activities; the conclusions drafted on that occasion were available to Committee members. All the aforementioned initiatives demonstrated the Government's willingness not only to protect the human rights of Argentine migrants abroad, but also to maintain a dialogue so

that the authorities could be aware of situations within their jurisdiction that needed to be improved.

4. **Ms. Figueroa** (Argentina) said that all migrant workers in Argentina, regardless of nationality, could invoke the Convention before the domestic courts, as illustrated by the examples cited in the State party's reply (CMW/C/ARG/Q/1/Add.1) to paragraph 11 of the list of issues (CMW/C/ARG/Q/1). It should be noted, however, that domestic legislation, even though adopted well before the Convention, in fact offered migrants better protection than that of the Convention, giving them access, for example, to health or education services, regardless of whether or not they were in a regular situation.

5. Argentina had begun preparing its initial report in 2008 by consulting the national bodies involved in the relevant fields, under the coordination of the General Directorate for Human Rights and the National Directorate of Migration. Once the Government had received the Committee's list of issues, a workshop focusing on the importance of human mobility had been held under the auspices of the local branch of the Office of the United Nations High Commissioner for Human Rights, with the participation of the institutional stakeholders concerned. The workshop had proved to be very useful, especially for all the civil servants who were not usually directly concerned with protecting the rights of migrant workers, such as those from the Ministry of Education or the Ministry of Health. In Argentina, preliminary drafts of reports to United Nations treaty bodies were circulated to non-governmental organizations (NGOs) for comment; however, in practice, NGOs still preferred to draft their own parallel reports, as was the case with the report currently being considered.

6. In 2000 Argentina had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and in 2008 it had adopted Act No. 26364 on the prevention and punishment of trafficking in persons and aid for victims, which classified trafficking as a federal offence, supplementing the provisions of the Criminal Code. The act, which drew a distinction between child and adult victims and required the latter to prove that coercion had been involved, had recently been amended to repeal that provision. It endowed victims with many rights, as set forth in paragraphs 118 et seq. of the State party's initial report (CMW/C/ARG/1). In 2008, Argentina had established the Office for the Rescue of and Assistance to Victims of Trafficking Offences within the Office of the Minister at the Ministry of Justice, Security and Human Rights, which was responsible, *inter alia*, for consolidating all complaints, documents and other communications related to trafficking in persons. By decision of the National Public Prosecutor's Office, investigations of offences related to trafficking would be entrusted to the Prosecution Unit on Kidnapping for Ransom and Trafficking in Persons. The National Tourism Secretariat, for its part, was implementing the Responsible Tourism and Children Programme, which focused on protecting the rights of children and adolescents in the context of travel and tourism and was designed to prevent sexual and labour exploitation and human trafficking.

7. On 31 August 2011, the Senate had passed a bill amending the 2008 Act on trafficking in persons. Under that bill, the victim's "consent" would no longer constitute a reason for persons who were guilty of or complicit in trafficking to be exempted from liability; penalties would be increased and protection for victims extended. Specialized aid agencies would be established, such as the Federal Council to Combat Trafficking in Persons and to Protect and Assist Victims, which under the Cabinet of Ministers would coordinate initiatives to combat the trafficking and smuggling of persons, while developing all necessary standards and modes of action. The bill also provided for the establishment of an executive committee to combat trafficking in persons and to assist and protect victims, which would comprise representatives of the various ministries concerned. The public

prosecutor's office would establish a nationally coordinated system for receiving complaints of trafficking in persons via a free hotline. Among the recent measures taken, it should be noted that the President of Argentina had issued a decree, based on current legislation prohibiting the publication of any sexually explicit material in the media.

8. Lastly, with regard to statistics on trafficking in persons, data were derived from searches carried out by the security forces, whose intervention had helped to save some 2,300 victims, including about 350 minors. The 2011 statistics showed that many of the victims were adults of Argentine nationality (622), while about 500 were foreign nationals, some 700 were victims of labour exploitation and 300 victims of sexual exploitation.

9. **Mr. Cavaleri** (Argentina) said that Argentines living abroad who had registered with a consulate could very easily exercise their right to vote in presidential elections. Indeed, there was broad participation in those elections.

10. Argentina always bore in mind the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). The first addressed the issue of workers in a regular situation and the obligation to treat them no less favourably than nationals, while the second was on migration in abusive conditions and on promoting equality of opportunity and treatment. Without going so far as to advocate complete equality of rights between workers in a regular situation and those in an irregular situation, the latter Convention did require States to respect the fundamental rights of all migrant workers. It should be noted, however, that the protection provided for in Act No. 25871 on migration went beyond that provided for in the two ILO conventions, to the extent that it did in fact recognize the rights of migrant workers irrespective of their migratory situation. Pursuant to article 56 of that act, employers were always required to respect the regulations set out in the labour legislation, irrespective of their employees' position with regard to that legislation. There was significant case law in that area in Argentina.

11. The rights of migrants, whether or not they were in an irregular situation, including their right to work, were established in a large corpus of legislation that was continually being developed. Migrants could not be denied access to education, health care or social assistance. However, no individual or public or private entity was allowed to offer a job or remunerated activity to a foreigner living in Argentina in an irregular situation. That ban was aimed exclusively at employers, who were the only ones exposed to the corresponding penalties.

12. Argentina ensured compliance with article 25 of the Universal Declaration of Human Rights, in particular through its social security system, which comprised six elements: the pension scheme, social welfare schemes, unemployment insurance, workplace injury insurance, the National Institute of Social Services for Retirees and Pensioners, and the family allowances system. The social security system was based on contributions that entitled individuals to benefits, but without the benefits being strictly related to the amount of an individual's contributions. The family allowances system, on the other hand, was based on a pure pay-as-you-go scheme, while the National Institute of Social Services for Retirees and Pensioners, the social welfare schemes and the pension scheme used a mixed system whereby contributions were one factor used to calculate benefits but beneficiaries were guaranteed minimum benefits.

13. The universal family allowances system, which had entered into force in November 2009, was a monthly benefit for parents who were unemployed or held jobs in the informal sector. The Government's primary concern was to ensure that the largest possible number of children were enrolled in school, underwent medical examinations, received mandatory vaccinations, etc. Those obligations must be fulfilled in order to qualify for the allowance. There were also other conditions with regard to nationality and the submission of

certificates of school attendance, vaccination, etc. Some 3.1 million children benefited from the programme.

14. **Ms. Figueroa** (Argentina) said that, according to the Migration Act, under no circumstances could persons in an irregular situation be deprived of access to education or health care, and Argentina took all necessary measures to promote the exercise of those rights by all migrants, whether or not their Argentine documents were in order. In that context, the National Directorate of Migration had made considerable efforts to publicize the right to education and health care among the public and national and local civil servants and had conducted an information campaign in 2009–2010 in hospitals, schools, and the 26 provincial migration offices. At the same time, as part of the National Sexual Health and Responsible Parenthood Programme, the Ministry of Health had coordinated a campaign to promote the rights of migrant women in that regard and to ensure respect for those rights by public bodies. That initiative had been carried out in cooperation with other relevant ministries and public bodies, both Argentine and foreign, and with the support of United Nations agencies and civil society associations. The National Directorate of Migration had also carried out other activities — workshops, debates, publications, audio-visual materials, poster campaigns, etc. — at various levels in order to raise awareness among public officials and the public about the legislation on migrants and the provisions of the Convention.

15. The face-to-face and online training programmes set up in 2009 and 2010 had made it possible to train 1,560 civil servants per year. Civil servants had also had the opportunity to take courses in English, Portuguese and Chinese to facilitate communication with migrants. The Directorate for International and Social Affairs of the National Directorate of Migration had focused on training within the framework of the Southern Common Market (MERCOSUR) and had developed the first online training course on migration regulations in the region. That course had been held in 2010–2011 as part of a specialized forum. The provincial migration offices had a system in place for training their new staff members and also organized one-day conferences or workshops on new issues with the participation of heads of offices, provincial representatives and members of the *Gendarmería Nacional*, among others. Neighbourhood information activities were also carried out as part of a programme led by specialized officials, who advised migrants on the documentation they should provide and the formalities to be completed. In February 2009, for example, the National Directorate of Migration had organized information days for Bolivian migrants, which were attended by consular authorities. In 2011, the National Directorate of Migration had published two handbooks designed to ensure the modern and transparent management of migration procedures, which had received ISO 9001 certification. The Office of the Secretary for Human Rights had also conducted training activities on the rights of migrants.

16. **Mr. Cavaleri** (Argentina) said that, in the case *Reyes Aguilera, Daniela v. Argentina*, the Supreme Court had declared unconstitutional article 1, paragraph e of Decree No. 437/97 on disability pensions, which required foreigners to reside legally in Argentina for at least 20 years before applying for a disability pension. Within the framework of MERCOSUR, Argentina had negotiated a multilateral agreement on social security, which had entered into force in June 2005 and allowed nationals of MERCOSUR countries who worked in another country in the region to combine the social security contributions they had paid there in order to qualify for a retirement, disability or survivor's pension. Negotiations to conclude similar bilateral agreements had been under way for several years with countries outside MERCOSUR that received large numbers of Argentine workers.

17. An information booklet entitled *Cómo Trabajar en los Países del MERCOSUR* ("How to Work in MERCOSUR Countries") had been prepared by the Ministries of Labour of the various countries concerned, explaining, inter alia, the rights of migrant workers, the

principle of mobility, the basic agreements on the movement of workers, the multilateral agreement on social security, the residency agreements and other important MERCOSUR agreements and instruments, and giving the contact details of the social security offices and immigration authorities in the various countries. One chapter on fraudulent employment offers and trafficking in human beings pointed out the risks to which workers were exposed in each of the countries, while another chapter dealt with child labour.

18. **Mr. Tall** said he welcomed the fact that the State party had recognized the right to immigration as a fundamental and inalienable human right. He wished to know what measures had been taken, in the case of migrant workers from outside MERCOSUR, to apply article 9 of Act No. 25871 on Argentine migration policy, which was aimed at implementing article 33 of the Convention regarding the right of migrant workers to be informed, and he asked about the conditions regulating their access to health-care services.

19. He wondered what the State party was doing to regularize the situation of Senegalese workers who had entered Argentina illegally after having obtained a visa for Brazil, from whence they had departed by boat for Argentina. Once they arrived at their destination, such migrants usually filed an application for refugee status, which was often rejected. It would be interesting to know if the State party had established contact with the Senegalese and Brazilian consular authorities with a view to protecting Senegalese migrant workers from exploitation.

20. Noting that corruption was rampant in Argentina, he asked whether that fact affected the implementation of the rights of migrants. He wished to have information on the situation of migrant domestic workers, and to know whether measures were taken to protect them. In that respect, he pointed out that the Committee had drafted a general comment (No. 1) on migrant domestic workers, distributed in February 2011.

21. Lastly, he asked if measures were taken to combat xenophobia targeting migrant workers from neighbouring countries, and whether the courts had issued decisions punishing acts of that nature.

22. **Mr. Alba** said that he wished to know whether the policy on the movement of persons within MERCOSUR was similar to the one established within the European Union or the Schengen area. He requested further information on any penalties handed down to persons who rented housing to foreigners in an irregular situation.

23. **Ms. Cubias Medina** requested clarification on the issue of administrative detention. Welcoming the fact that the Government's objective was not to place migrant workers in detention or to deport them, but instead to regularize their situation, she asked whether illegal migrant workers from countries outside the region were left to go free and then contacted by the authorities to regularize their situation, or, if they were placed in detention, whether such places of detention in Argentina were separate from criminal detention centres, as provided for in the Convention.

24. **Mr. Brillantes** (Country Rapporteur for Argentina) said that he would like to know if the Argentine delegation had considered the report of the Special Rapporteur on trafficking in persons, especially in women and children, which included observations and recommendations.

25. **Mr. Kariyawasam** requested more specific information about the policy on immigrants in Argentina and on Argentine emigrants, on the option of obtaining dual nationality and, if relevant, on the conditions for granting Argentine nationality.

26. **Mr. Sevim**, returning to the issue of social security contributions, asked whether nationals of countries outside MERCOSUR who had worked in Argentina were entitled to retirement, disability or survivor's pensions when they returned to their country. He wished

to know whether migrant workers could join or establish a trade union, and whether Argentines living abroad could vote in the country's national elections.

27. **Ms. Miller-Stennett** asked whether Argentine workers went abroad to perform seasonal work and, if so, whether the State had signed bilateral agreements with the destination countries and had established legal, consular or other services for those workers.

28. **Mr. Taghizadet** said that he would like to have statistics on migrants from South America who transited through Argentina.

The meeting was suspended at 11.50 a.m. and resumed at 12.15 p.m.

29. **Mr. Cavaleri** (Argentina) said that, in accordance with Act No. 24007 of 1991 on establishing a registry of voters living abroad, Argentines abroad could vote in national Argentine elections, provided that they registered their name in the registry of voters living abroad by the deadline, either by Internet or in person at their local consular office.

30. The steps the Government had taken with regard to the right of migrant workers to have access to information were set out in paragraphs 201 and 202 of the State party's initial report (CMW/C/ARG/1). The obligation to inform migrant workers applied both to Argentines who went abroad to work and to foreigners who immigrated to Argentina. Information was available on websites for Argentines abroad and at the diplomatic missions in the major destination countries. For example, the website of the embassy of Argentina in Spain provided, inter alia, information on employment and on procedures for obtaining a visa and residence permit.

31. **Ms. Figueroa** (Argentina) said that migrant domestic workers were subject to a special social security scheme under Act No. 25239 of 1999, which also contained a precise definition of a domestic worker. That definition was based on the number of hours worked per week (at least six) for the same employer. The Argentine authorities were in favour of regularizing migrant domestic workers and offered a tax cut for employers who regularized the situation of their domestic workers. The minimum wage for domestic workers was revalued on a regular basis.

32. She placed particular emphasis on the membership, operation and role of the National Institute against Discrimination, Xenophobia and Racism (INADI) as referred to in paragraphs 16 to 24 of the report, which she read aloud.

33. She recalled that in 2002 Argentina had extended an invitation to the special procedure mandate holders. In September 2010, the Special Rapporteur on trafficking in persons, especially in women and children had visited Argentina, where she had met with the highest relevant authorities and representatives of civil society. She had drafted a report (A/HRC/17/35/Add.4) with recommendations, which Argentina generally supported, regarding matters such as amending the legislative framework, providing comprehensive aid for victims, building capacity among officers and civil servants, protecting witnesses, and increasing cooperation with neighbouring countries. In response, Argentina had strengthened programmes to assist victims, train officers and civil servants and combat trafficking for the purpose of exploitation. The Senate had just recently adopted a law amending the 2008 law on trafficking. Those amendments addressed the main concerns about the law, namely, the need to eliminate the notion of consent as a reason for traffickers to be exempted from liability and to improve coordination among stakeholders.

34. **Mr. Manzanares** (Argentina) said that migrants, whether they were in a regular or irregular situation, had access to all health-care services except for transplants, which could only be performed on persons residing permanently in Argentina, save in exceptional circumstances. Contact had been established with the Senegalese Government through the embassy of Senegal in Brazil to regularize the situation of Senegalese in Argentina when requested by the Senegalese Government.

35. It could be said that the region was moving towards a Schengen-type area and that the double border control was gradually being done away with, as was the case with the Chilean and Uruguayan borders. Given that setting up such an area depended on standardizing the computer systems used for processing data, the National Directorate of Migration had offered its own computer system to neighbouring countries, and Uruguay had accepted that offer.

36. Any person who accepted money in exchange for housing a migrant in an irregular situation was subject to penalties. Migrants had the right to join a trade union and to conduct union activities at all levels. There were very few Argentine seasonal workers abroad. Argentine nationality could not be lost, and Argentina was not opposed to dual nationality. According to Act No. 342, two years of regular or irregular residence in Argentina were sufficient to acquire nationality, and *jus soli* applied to all children, whether they were born to parents in a regular or irregular situation.

37. Lastly, given that only 17 migrants had been deported in the past four years, the Government had chosen not to establish detention centres for migrants; on the other hand, it sought to ensure that the few individuals who were detained did not have to share the space in which they were held. In addition, the law stipulated that a migrant under a deportation order could be released on real security or personal recognizance prior to deportation.

38. **Mr. Brillantes** thanked the delegation and welcomed the precise answers it had provided during the discussion. He congratulated Argentina on the quality of its report, which could serve as a model for other States parties to follow.

39. **The Chairperson** welcomed the rich and profound dialogue that had taken place, while regretting that the issue of the rights of migrants was sometimes lost within the larger issue of human rights. He also regretted the late submission of the report and replies to the list of issues, which it had not been possible to translate in time. Lastly, he stressed the fact that migration policies were not enough and that the public must also be made aware of the rights of migrant workers.

The meeting rose at 1 p.m.